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MANUAL

FOR THE USE OF

BOARDS OF HEALTH

OF

MASSACHUSETTS,

CONTAINING THE

STATUTES RELATING TO THE PUBLIC HEALTH,

THE POWERS AND DUTIES OF THE MEDICAL EXAMINERS, AND THE REGISTRATION OF VITAL STATISTICS,

WITH REFERENCES TO THE

DECISIONS OF THE SUPREME COURT OF MASSACHUSETTS ON THE SAME.

PREPARED AT THE DIRECTION OF THE

STATE BOARD OF HEALTH.

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ORGANIZATION OF THE STATE BOARD OF HEALTH OF MASSACHUSETTS.

Members of the Board, 1896-'97.

HENRY P. WALCOTT, M.D., *Chairman*, ... CAMBRIDGE.
FRANK W. DRAPER, M.D., ... BOSTON.
HIRAM F. MILLS, C.E., ... LAWRENCE.
GERARD C. TOBEY, ESQ., ... WAREHAM.
JAMES W. HULL, ... PITTSFIELD.
CHARLES H. PORTER, ... QUINCY.
JULIAN A. MEAD, M.D., ... WATERTOWN.

SAMUEL W. ABBOTT, M.D., *Secretary*, Room 142, STATE HOUSE, BOSTON.
JOSEPH P. DAVIS, C.E., *Consulting Engineer*.
X. H. GOODNOUGH, C.E., *Chief Engineer*, Room 139, STATE HOUSE, ... BOSTON.
T. M. DROWN, M.D., *Consulting Chemist*.
WILLIAM T. SEDGWICK, PH.D., *Consulting Biologist* (Mass. Institute of Technology), ... BOSTON.
ELLEN H. RICHARDS, S.B., *Consulting Water Analyst*. BOSTON.
H. W. CLARK, *Chemist* (in charge of Experiment Station), LAWRENCE.
THEOBALD SMITH, M.D., *Pathologist* (Bussey Institution), ... FOREST HILLS, ROXBURY.
CHARLES P. WORCESTER, M.D., *Analyst of Food and Drugs*, ... 501 STATE HOUSE, BOSTON.

Standing Committees of the Board.

ELECTED JUNE, 1896.

On Finance. — Messrs MEAD, WALCOTT and HULL.
On Water Supply and Sewerage. — Messrs. MILLS, WALCOTT, HULL, DRAPER and TOBEY.
On Public Institutions. — Messrs. PORTER, WALCOTT, MILLS and DRAPER
On Food and Drugs. — Messrs. WALCOTT, DRAPER and PORTER.
On Legislation and Legal Proceedings. — Messrs. TOBEY, MEAD and HULL.
On Health of Towns and Correspondence with Local Boards of Health. — Messrs. DRAPER, MILLS and MEAD.
On Contagious Diseases — Messrs. WALCOTT, DRAPER and PORTER
On Publications. — Messrs. WALCOTT, HULL and DRAPER.
On Registration of Vital Statistics. — Messrs. DRAPER, WALCOTT and PORTER.

A digest of the power and duties of the State Board of Health is published in this Manual (page 187).

BY-LAWS OF THE BOARD.

ADOPTED, 1886.

(1.) The Board shall, on the first Thursday in June in each year, elect by ballot a chairman and a secretary, who shall each hold office for one year and until his successor shall have been chosen. In the absence or disability of the chairman or secretary, a chairman or secretary *pro tem.* may be chosen, as the Board may determine.

(2.) Regular meetings of the Board shall be held on the first Thursday of each month, at such hour as the Board may designate, and, unless otherwise ordered, shall be holden at the office of the Board. Special meetings may be called at any time by the chairman, and shall be called by him upon the request in writing of two members of the Board.

(3.) At the annual meeting of the Board, or as soon thereafter as may be, the following standing committees shall be chosen by ballot: —

A committee on Finance;

A committee on Publications;

A committee on Water Supply and Sewerage (acting under chapter 375, Acts of 1888);

A committee on Public Institutions;

A committee on Food and Drugs;

A committee on Legislation and Legal Proceedings;

A committee on Health of Towns;

A committee on Correspondence with Local Boards of Health;

A committee on Contagious Diseases;

A committee on Vital Statistics.

(4.) Four members shall make a quorum for the transaction of business.

HISTORICAL SKETCH.

The State Board of Health of Massachusetts had its origin as early as 1849, but was not established by law until twenty years later. The year 1849 was one of unusual sickness and mortality throughout the State. Typhoid fever, dysentery and scarlet-fever had prevailed to an unusual extent, and, in addition to these, Asiatic cholera had invaded the State and destroyed about twelve hundred of its population.

In that year, by authority of the Legislature, a commission was appointed to report upon the sanitary condition of the State. One of the primary recommendations of this commission advised the establishment of a "general board of health," the functions of which were very clearly stated; and when the board was finally established in 1869, under the title of the State Board of Health and Vital Statistics, it was organized very nearly in accord with the suggestions of the sanitary commission of 1849.

The Board was reorganized, with enlarged powers, in 1886.

INTRODUCTION.

This Manual of the Statutes of Massachusetts relative to Public Health has been prepared at the direction of the State Board of Health, for the use of local boards and for all persons directly interested in questions which pertain to public health. It is not an annual publication, but is issued by the Board at intervals of three or four years, as occasion may demand.

A former manual prepared in 1882 followed quite closely through the first ninety-six sections the numbering employed in the Public Statutes. In consequence of the introduction of many new statutes, enacted since 1882, and the repeal of others, such numbering has necessarily been abandonded in the later editions, and the chapter and section is given in connection with each section. The present edition of the manual has been revised by Edmund M. Parker, Esq., attorney-at-law and member of the Cambridge Board of Health.

The statutes and the decisions of the supreme court have both been subjected to careful scrutiny with reference to the accuracy of their presentations, and much irrelevant material has been omitted and new and more important material added.

The present edition contains (in addition to the laws published in the Manual of 1894) all the health statutes enacted by the Legislatures of 1894, 1895 and 1896.

The dates in heavier type opposite many of the sections are the years in which those statutes, or laws essentially the same, together with their amendments, were enacted.

The laws relating to the medical examiners, and also those relating to the registration of vital statistics, both of which are of special interest to the medical practitioner, have been introduced in the later editions of the Manual.

The State registration of vital statistics appears to have had its origin in the following act, passed in 1639 : —

"Item, that there be records kept . . . of the days of every marriage, birth and death of every person within this jurisdiction."—*Colony Laws, Chap. III., 1639.*

The next act having any direct sanitary bearing was the following : —

Chapter 23 of the Acts of the General Assembly of Massachusetts Bay (1692–1693). Second session.

An act for prevention of common nuisances arising by slaughter-houses, still-houses, etc., tallow-chandlers and curriers.

The following summary of the public health acts of Massachusetts is taken from the report of the Sanitary Commission of Massachusetts, presented to the Legislature in April, 1850 : —

TITLES OF ACTS RELATING TO PUBLIC HEALTH; PASSED BY THE STATE OF MASSACHUSETTS.

DATE.

1692. An Act for prevention of common nuisances arising by slaughter-houses, still-houses, etc., tallow-chandlers and curriers. *Acts and Laws of Province of Massachusetts Bay, Ed.* 1759 and 1771. Page 15.

1696. Chap. 6. An Act in addition to an Act for preventing of common nuisances arising from slaughter-houses, still-houses, etc. Page 68.

1700. An Act directing the admission of town inhabitants. Page 125.

1701. An Act providing in case of sickness. Page 135. Repealed 1797.

1702. An Act for appointing commissioners of sewers. Page 142. Repealed 1796.

1708. An Act in addition to and explanatory of the Act for prevention of common nuisances. Page 158.

1709. An Act for regulating of drains and common shores. Page 161. Repealed 1796.

1710. An Act explaining and enlarging of the Act for prevention of common nuisances arising by slaughter-houses, still-houses, etc., tallow-chandlers and curriers. Page 166.

1730. An Act empowering courts to adjourn and remove from the towns appointed by law for holding courts to other towns, in case of sickness from small-pox. Page 265. Repealed 1797.

1742. An Act to prevent the spreading of small-pox and other infectious sickness, and to prevent the concealing the same. Repealed 1797.

1744. An Act in addition to an Act for regulating drains and common shores. Repealed 1796.

1750. An Act to regulate the importation of *German* and other passengers come to settle in the Province. Page 342.

DATE.

1751. An Act in addition to an Act made and passed in the thirteenth year of King *William* the Third, entitled, "*An Act providing in case of sickness.*" Page 356. Repealed 1797.

1757. An Act for regulating the hospital on *Rainsford's Island*, and further providing in case of sickness. Page 375. Repealed 1797.

1758. An Act in addition to an Act entitled "*An Act for regulating the hospital on Rainsford's Island, and further providing in case of sickness.*" Page 378 Repealed 1797.

1763. An Act in addition to an Act relating to common sewers. Repealed 1797.

1776. An Act to prevent the continuance of the small-pox in the town of *Boston*, and to license inoculation there for a short time. Repealed 1797.

1776. An Act empowering justices of the court of general sessions of the peace in the several counties to permit inoculating hospitals to be erected in said counties. Repealed 1792.

1777. An Act in addition to the above Act. Repealed 1792.

1785, March 8. An Act against selling unwholesome provisions. Vol I., page 224. Repealed 1836.

1785, June 7. An Act for preventing common nuisances. *Laws.* Ed. 1801. Vol. I., page 241. Repealed 1836.

1787, Feb. 28. An Act for the due regulation of licensed houses. Page 374. Repealed.

1788, March 26. An Act for suppressing and punishing of rogues, vagabonds, common beggars, and other idle, disorderly and lewd persons. Page 411. Repealed 1834. Laws 1834, page 206.

1792. An Act providing for the establishment of hospitals for inoculating with the small-pox, and for repealing all laws heretofore made for that purpose. Repealed 1798.

1793, March 15. An Act providing hospitals for inoculation, and for preventing infection from small-pox, and for repealing several Acts heretofore made for that purpose. Vol. II. Repealed 1837.

1796, Feb. 26. An Act for appointing commissioners of sewers, and making provision for the better improvement of low lands in certain cases. Vol. II., page 721. Repealed 1836.

1797, Feb. 20. An Act for regulating drains and common sewers. Vol. II., page 752. Repealed 1836.

1797, June 22. An Act to prevent the spreading of contagious sickness. Vol. II., page 788. Repealed 1836.

1798, Feb. 27. An Act in addition to an Act entitled "An Act for suppressing rogues, vagabonds, common beggars, and other idle, disorderly and lewd persons." Vol. II., page 812. Repealed 1834.

1799, Feb. 13. An Act to empower the inhabitants of the town of *Boston* to choose a board of health, and for removing and preventing the nuisances in said town. Vol. II., page 837. Repealed June 20, 1799.

1799, June 29. An Act to empower the town of *Boston* to choose a board of health, and for removing and preventing nuisances in said town. Vol. II., page 867.

DATE.

1799, June 21. An Act to empower the inhabitants of the town of *Salem* to choose a board of health, and for removing and preventing the nuisances in said town. Vol. II., page 879.

1800, Feb. 26. An Act in addition to an Act entitled "An Act to prevent the spreading of contagious diseases." Vol. II., page 896. Repealed 1836.

1800, March 4. An Act in addition to an Act entitled "An Act to prevent common nuisances." Vol. II., page 921. Repealed 1836.

1800, June 16. An Act in addition to an Act entitled "An Act to empower the inhabitants of the town of *Salem* to choose a board of health, and for removing and preventing nuisances in said town," and for repealing part of said Act. Vol. II., page 939.

1802, Feb. 22. An Act to empower the inhabitants of the town of *Marblehead* to choose a board of health, and for removing and preventing nuisances in said town. Vol. III., page 44.

1803, June 18. An Act in addition to an Act entitled "An Act to empower the town of *Boston* to choose a board of health, and for removing and preventing nuisances in said town." Vol. III , page 161.

1804, March 7. An Act to repeal a part of an Act entitled "An Act to empower the town of *Boston* to choose a board of health, and for removing and preventing nuisances," and for making further additions thereto. Vol. III., page 218.

1809, June 16. An Act in further addition to an Act entitled "An Act to entitle the town of *Boston* to choose a board of health, and for removing and preventing nuisances." Session Laws, 1809. Page 11.

1810, Feb. 27. An Act to empower the inhabitants of the town of *Plymouth* to choose a board of health, and for removing and preventing nuisances in said town. Session Laws, 1810. Page 89.

1810, March 6. An Act to diffuse the benefits of inoculation for the cow-pox. Session Laws, 1810. Page 204. Repealed 1836.

1810, March 6. An Act in further addition to an Act entitled "An Act to empower the town of *Boston* to choose a board of health, and for removing and preventing nuisances." Session Laws, 1810. Page 221.

1816, June 20. An Act to empower the town of *Boston* to choose a board of health, and to prescribe their power and duty. Session Laws, 1816. Page 258.

1818, June 12. An Act authorizing the town of *Charlestown* to establish a board of health. Session Laws, 1818. Page 14.

1821, June 26. An Act to empower the inhabitants of the town of *Lynn* to establish a board of health, and for removing nuisances in said town. Session Laws, 1821. Page 588.

1822, Feb. 23. An Act to establish the city of *Boston*. Session Laws, 1822 Page 734.

1827, March 2. An Act authorizing the town of *Cambridge* to establish a board of health. Session Laws, 1827. Page 473.

1835, Nov. 4. REVISED STATUTES. — Went into operation April 30, 1836.

Chap. 21. On the preservation of the public health; quarantine; nuisances and offensive trades. Pages 207–214.

DATE.

Chap. 131. Of offences against the public health. Page 742.

1837, April 20. An Act relating to alien passengers.

1837, April 20. An Act concerning the public health. *Supt. Rev. Stat.* Page 58.

1838, April 20. An Act to repeal certain provisions of the law in relation to the small-pox. *Ibid.*, page 82.

1840, March 18. An Act concerning the small-pox. *Ibid.*, page 149.

1841, March 17. An Act in relation to main drains and common sewers. *Ibid.*, page 196.

1842, March 3. An Act relating to the registry and returns of births, marriages and deaths. *Ibid.*, page 240.

1844, March 16. An Act relating to the registry and returns of births, marriages and deaths. *Ibid*, page 308.

1848, April 18. An Act to repeal certain provisions of law in relation to the small-pox. *Ibid.*, page 451.

1848, May 10. An Act concerning alien passengers.

1849, May 2. An Act in relation to the public health. *Ibid.*, page 549.

1849, May 2. An Act relating to the registration of births, marriages and deaths. *Ibid*, page 545.

1850, March 20. An Act relating to alien passengers. Session Laws. Pages 338 and 467.

1850, March 21. An Act in addition to an Act relating to the public health. *Ibid.*, page 341.

In many cases references to decisions of the supreme court of the State are given under the sections to which they relate.

The statutes impose upon boards of health the duty of protecting the people from those causes and influences which may injuriously affect their health. Mr. Justice Wells, in delivering the opinion of the court in the case of Salem *v.* Eastern Railroad Company, 98 Mass. 431, 433, says, referring to local boards of health, "Their action is intended to be prompt and summary. They are clothed with extraordinary powers for the protection of the community from noxious influences affecting life and health; and it is important that their proceedings should be delayed as little as possible. Delay might defeat all beneficial results; and the necessity of the case, and the importance of the public interests at stake, justify prompt action."

OFFICE OF THE STATE BOARD OF HEALTH,
BOSTON, STATE HOUSE, January, 1897.

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MANUAL.

GENERAL POWERS AND DUTIES OF STATE BOARD.

Acts of 1886, 101, § 1.

State board of health.

The governor with the advice and consent of the council shall appoint seven persons who shall constitute the state board of health. The persons so appointed shall hold their offices for seven years; provided that the terms of office of the seven first appointed shall be so arranged that the term of one shall expire each year. All vacancies on said board, whether occurring by expiration of term, or otherwise, shall be filled by the governor with the advice and consent of the council.

How appointed.

Term of office.

Vacancies, how filled.

Acts of 1886, 101, § 2.

Rooms to be provided.

Meetings.

By-laws.

Report.

The board shall be provided with rooms at the expense of the state and shall hold meetings each month on a day fixed by itself, and at such other times as may be needful. It shall make its own by-laws, and shall make a report of its doings to the governor and council on or before the thirty-first day of December in each year, such report being made up to the thirtieth day of September inclusive.

Acts of 1886, 101, § 3.
Acts of 1889, 370.

Secretary.

Duties.

Secretary pro tem.

The board shall elect a secretary, who shall be the executive officer and shall hold office during the pleasure of the board. He shall perform or superintend the work prescribed by law for the state board of health, and as directed by the board, and such other duties as the board may require. He shall not be ex officio a member of the board, but the board may, whenever it shall be deemed

necessary, elect one of the members secretary pro tempore who may in the absence or disability of the secretary perform the duties of that officer. The secretary shall receive from the treasury an annual salary of three thousand dollars and his necessary travelling expenses incurred in the performance of official duties. No member of the board shall receive any compensation; but the actual personal expenses of any member while engaged in the duties of the board shall be paid from the treasury, after they have been audited by the board. All other necessary expenses arising in the secretary's office or from the discharge of the duties of the board shall be paid out of the treasury in the same manner as those of the different departments of the government.

Salary of secretary.

Expenses of board and office.

P. S., 80, § 1.
Acts of 1886, 101, § 4.

Certain general powers and duties of the state board of health.

The state board of health shall take cognizance of the interests of health and life among the citizens of the commonwealth. It shall make sanitary investigations and inquiries in respect to the causes of disease, and especially of epidemics and the sources of mortality and the effects of localities, employments, conditions, and circumstances, on the public health; and shall gather such information in respect to those matters as it may deem proper, for diffusion among the people. It shall advise the government in regard to the location and other sanitary conditions of any public institutions.

The state board of health was originally established by chap. 420, Acts of 1869.

Its powers were subsequently enlarged by chap. 167, Acts of 1871, and chap. 183, Acts of 1878.

By chap. 291, Acts of 1879, its powers were transferred to the newly established state board of health, lunacy and charity.

By chap. 101, Acts of 1886, the state board of health was re-established, and its powers were still further enlarged by chap. 274, Acts of 1886, and further by chap. 375, Acts of 1888.

P. S., 80, § 2.
Acts of 1894, 218, § 4.

Further duties in case of contagious diseases.

If small-pox or any other contagious or infectious disease dangerous to the public health exists, or is likely to exist in any place within the state, the state board shall

investigate the same, and the means of preventing the spread thereof, and shall consult thereon with the local authorities, and shall have co-ordinate powers as a board of health, in every place, with the board of health thereof, or with the mayor and aldermen or the selectmen, if no such board or officer exists in such place.

State board shall have co-ordinate powers with local boards.

[For other powers and duties of the state board of health see pages 4, 26, 38, 51, 53, 58, 59-64, 74, 110, 123, 159, 187.]

GENERAL PROVISIONS.

P. S., 80, § 106.

The provisions of this chapter [c. 80, Public Statutes] extend to cities so far as the same are not inconsistent with their several charters or acts in amendment thereof.

Chapter extends to cities.

Acts of 1893, 460, § 1.

The supreme judicial court sitting in equity may, on the application of the board of health of a city or town, by any appropriate process or decree, enforce the provisions of chapter eighty of the Public Statutes, and of the acts in amendment thereof or in addition thereto, and this remedy shall not supersede, but shall be in addition to any other remedies provided for the purpose.

Supreme court may enforce health laws.

Acts of 1893, 460, § 2.

The court may frame issues of fact to be tried by a jury in any case under the preceding section, when requested by a party, and direct the same to be tried in the county where such cause is pending, at the bar of the supreme judicial court, or the superior court; and if the regular term for such trial does not come within one month from the making up of such issues, any justice of the court may order the clerk for the county where the case is pending, to summon a jury in the ordinary manner of trying any such issues, and the proceedings at such trial shall be in all respects the same as if at the regular term of the court, and the record thereof shall have the same force and effect as any other record of the court.

Trial of cases.

TOWN AND CITY BOARDS OF HEALTH.

Acts of 1895, 506, § 2.

Towns may elect boards of health by ballot. Three persons, each for three years. Selectmen to be the board, when.

1797
1817
1878

Every town in the Commonwealth may elect a board of health by ballot at the annual meeting of the town, or at a meeting legally warned for the purpose, consisting of three persons, to serve, one for the term of three years, one for the term of two years and one for the term of one year, beginning with the day following such town meeting or until their respective successors are chosen and qualified; and thereafter such town shall, at its annual town meeting, choose in the same manner one person who shall hold office for three years from the day following such town meeting or until another is chosen and qualified in his stead. If no such board is chosen the selectmen shall constitute such board of health.

Acts of 1894, 218, § 3.

One member of board to be a physician in towns of 5,000 people.

Local board to report deaths to state board.

In each city and town having a population of more than five thousand inhabitants, as determined by the last census, at least one member of said board shall be a physician, and the board shall send an annual report of the deaths in such town to the state board of health. The form of such reports shall be prescribed and furnished by the state board of health.

Acts of 1895, 506, § 3.

Physician not required to be a member, when.

So much of section three of chapter two hundred and eighteen of the acts of the year eighteen hundred and ninety-four as provides that one member of the board of health shall be a physician, shall not apply to towns in which the selectmen constitute the board of health.

Acts of 1885. 307, § 1.

Vacancy in local board by refusal to accept office, how filled.

If a person elected a member of a board of health in any town, respecting which no provision is made by special law for choosing a board of health, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if a member of a board of health in such

town declines further service, or from change of residence or otherwise becomes unable to attend to the duties of the board, the remaining members shall, in writing, give notice of the fact to the selectmen of such town, and the two boards shall thereupon, after giving public notice of at least one week, jointly proceed to fill such vacancy.

Acts of 1895, 332, § 1.

City boards of health, how appointed.

In each city, except Boston, there shall be appointed by the mayor subject to confirmation or rejection by the board of aldermen, except where other provision is made in the city charter, a board of health, consisting of three members, who shall hold office for the term of three years from the first Monday in February next succeeding their appointment, one of whom shall be a doctor of medicine. They shall not be members of the city council. If such boards are not already in existence, appointments shall be made as herein provided of three persons, one for the term of one year, one for the term of two years and one for the term of three years; and thereafter one member shall be appointed annually for the term of three years from the first Monday in February next succeeding such appointment. Members of existing boards shall continue to hold office until the appointment of a new board in accordance with the provisions of this act. All vacancies shall be filled by appointment for the unexpired term as above-provided. Each member so appointed shall be subject to removal by the mayor for cause, and shall receive such compensation as the city council shall from time to time determine.

Term of office, vacancies and removals.

1877

P. S. 80, § 8. 1894, 174.

133 Mass. 588.

P. S., 80, § 5.

Board may appoint physician.

Every such board of health may appoint a physician to the board, who shall hold his office during its pleasure.

1816

P. S., 80, § 6.

Compensation of physician, etc.

Such board shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of persons employed by it in the execution of the health laws and of its own regulations.

1816

P. S., 80, § 9.

How to be organized.

1877

Such boards shall organize annually by the choice of one of their number as a chairman; they may also choose a clerk, not a member of the board, and make such rules and regulations for their own government and for the government of all subordinate officers in their department as they may deem expedient.

P. S., 80, § 10.

Powers and duties.

1877

Such boards may exercise all the powers vested in, and shall perform all the duties prescribed to, city councils or mayors and aldermen as boards of health, under the statutes and ordinances in force in their respective cities on the seventeenth day of May in the year eighteen hundred and seventy-seven; and may appoint such subordinate officers, agents and assistants as they may deem necessary, and may fix their compensation and that of their clerk; but the whole amount of such compensation shall not exceed the sum appropriated therefor by the city council.

P. S., 80, § 11.

To make annual reports.

1877

In each city such board of health shall annually, in January, present to the city council a report made up to and including the thirty-first day of the preceding December, and containing a full and comprehensive statement of its acts during the year, and a review of the sanitary condition of the city; it shall also, when the city council or the standing committee thereof on finance so requires, send to the auditor of accounts an estimate in detail of the appropriations required by its department during the next financial year.

P. S., 80, § 12.

May enforce regulations as to house drainage.

1702
1877
1881

Such boards may prepare and enforce in their respective cities such regulations as they deem necessary for the safety and health of the people, with reference to house drainage and its connection with public sewers, where a public sewer abuts the estate to be drained.

The following decision was made on statutes applying to the city of Boston: —

The Statute of 1885, chap. 382, sect. 2, as amended by the Statute of 1889, chap. 450, sect. 2, providing under a penalty

that certain buildings in Boston "situated on a public or private street, court, or passageway, in which there is a public sewer, and every building connected with any sewer, shall have sufficient water-closets connected with the sewer, and shall not have a cesspool or privy, except where in the opinion of the board of health it can be allowed to remain temporarily, and then only as said board shall approve," applies to violations which continue after its passage, or which then come into existence, and is constitutional as an exercise of the police power.

The Legislature by the use of the word "water-closet" in the Statutes of 1885, chap. 382, sects. 1, 2, and 1889, chap. 450, sect. 2, intended an arrangement, then in common use, connected with a sewer, and having a permanent water supply which can be used systematically and regularly for carrying whatever is deposited therein to the sewer, and not a privy vault, which, although connected with a sewer, has no water supply for flushing it, except such as depends on chance.

Commonwealth *v.* Roberts, 155 Mass. 281.

Acts of 1889, 108.

Towns may authorize boards of health to make regulations as to house drainage and its connection with sewers. 1889

Any town may authorize its board of health to make and enforce in such town such regulations as said board may deem necessary for the safety and health of the people with reference to house drainage and its connection with public sewers, where a public sewer abuts the estate to be drained. Whoever violates any such regulation shall forfeit a sum not exceeding one hundred dollars.

Acts of 1890, 74, § 1.

Privy vault not to be established in sewered street without permission of board of health.

No privy vault shall be established in a city which accepts this act either upon premises situated on a public or private street, court or passageway where there is a public sewer opposite thereto, or upon premises connected with a public or private sewer, without permission in writing first obtained from the board of health of such city.

Board may declare vault a nuisance and forbid its continuance.

And whenever there is in such city a privy vault so situated which, in the opinion of the board of health of such city, is injurious to the public health, said board shall declare the same to be a nuisance, and forbid its continuance, and sections twenty-one to twenty-three inclusive of chapter eighty of the Public Statutes shall apply to such nuisances so declared.

Acts of 1890, 74, § 2.

Act to take effect when accepted by city council.

This act shall take effect in any city of the Commonwealth when accepted by the city council thereof.

Acts of 1890, 132, § 1.

Buildings to be connected with sewer, when.

Every building situated on a public or private street, court or passageway, in which there is a public sewer, shall, when required by the board of health of the city or town in which it stands, be connected by a good and sufficient particular drain with such public sewer.

Acts of 1890, 132, § 2.

Penalty.

Any person owning, leasing or maintaining any building not connected with a public sewer as provided in the preceding section shall be punished by a fine not exceeding two hundred dollars.

On a complaint under Statute of 1890, chap. 132, against the defendant for maintaining a building not connected with a public sewer, although required to connect it by the board of health, it appeared that the city council, under its charter, ordered the committee on drainage "to extend section 8 of the eastern intercepting sewer from its present terminus through C and New C streets to W Avenue"; that the sewer was laid through private land below the point where it passed the defendant's house, without other authority than the statute and the land-owner's unrecorded waiver under seal of damages, and that it was laid through the defendant's land at a place above his own house, and the defendant neither had licensed it nor had been paid for it. *Held*, that the order was sufficiently definite, and implied an adjudication of necessity; that the sewer was lawful below the defendant's house, and that it was immaterial that the waiver was not recorded; that if the sewer was unlawful where it crossed the land above, it was not made unlawful throughout; that the failure to keep the plan of the sewer in the city clerk's office had no bearing on the proceedings; and that a short answer to most of the defendant's objections was that they could be taken only by *certiorari*.

Commonwealth *v.* Abbott, 160 Mass. 282.

P. S., 80, § 16.

Board of health may appoint agents, etc.

1866
1879

The board of health in a city or town may appoint an agent or agents to act for it in cases of emergency, or when it cannot be conveniently assembled; and such agent so appointed shall have all the authority which the

board appointing them had; but he shall, within two days, report his action in each case to it for its approval, and shall be directly responsible to it and under its control and direction. An agent appointed to make sanitary inspections may make complaint in cases of violation of any law, ordinance, or by-law relating to the public health in a city or town.

It is not necessary that a complaint to recover the forfeiture provided by the Pub. Stats., chap. 80, sect. 21, for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, should be made by the town treasurer, but it may be made by an agent of the board of health, appointed under the Pub. Stats., chap. 80, sect. 16.

An omission in a complaint, under the Pub. Stats., chap. 80, sect. 21, for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, to allege that the complainant is an agent of the board of health, he being in fact such agent, is at most a formal defect, which can be availed of only by a motion to quash.

Commonwealth *v.* Alden, 143 Mass. 113.

A notice issued, under Pub. Stats., chap. 80, sect. 21, by the board of health of a town to the occupant of certain premises, ordering him to remove the nuisance existing thereon, may be served by a constable, although he is a member of the board of health and signs the notice.

Commonwealth *v.* Alden, 143 Mass. 113.

P. S., 80, § 17.

The board of health of a city or town shall retain charge of any case arising under the provisions of this chapter in which it shall have acted, to the exclusion of the overseers of the poor.

To retain charge of case, after acting therein.

1874

DISPOSAL OF GARBAGE.

Acts of 1889, 326.

Whoever knowingly feeds or has in his possession with intent to feed to any milch cow, any garbage, refuse or offal collected by any city or town, or by any person having authority from any city or town, by contract or otherwise, shall be punished by imprisonment in the jail or house of correction not exceeding sixty days or by fine not exceeding one hundred dollars.

Garbage and offal not to be fed to milch cows.

Acts of 1889, 377.

City or town may contract for the disposal of garbage, etc.

Any city or town may, by its board of aldermen, selectmen, board of health or other officer or officers having in charge the disposition of the garbage, refuse and offal of such city or town, contract for a term of years for the disposition of such garbage, refuse and offal by cremation or otherwise.

Acts of 1895, 385.

Feeding of certain garbage, etc., to food animals, except swine, prohibited. Penalty.

Whoever knowingly feeds or has in his possession with intent to feed to any food animal, except swine, any garbage, refuse or offal collected by any city of more than thirty thousand inhabitants, by contract or otherwise, shall be punished by imprisonment in the jail or house of correction not exceeding thirty days, or by fine not exceeding fifty dollars.

NUISANCES, SOURCES OF FILTH, CAUSES OF SICKNESS, ETC.

P. S., 80, § 18.

Board of health to make regulations respecting nuisances, etc.

1797

The board of health of a town shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth and causes of sickness, within its town, or on board of vessels within the harbor of such town, and respecting articles which are capable of containing or conveying infection or contagion, or of creating sickness, brought into or conveyed from its town, or into or from any vessel. Whoever violates any such regulation shall forfeit a sum not exceeding one hundred dollars.

A regulation that no person shall remove, cart, or carry through any of the streets, lanes or alleys of a city, any house-dirt, refuse, offal, filth or animal or vegetable substance from any of the dwelling-houses or other places occupied by the inhabitants, in any cart, wagon, truck, hand-cart or other vehicle, unless such person so removing, together with the cart, shall be duly licensed for that employment and purpose by the mayor and aldermen, upon such terms and conditions as they shall deem the health, comfort, convenience or interest of the city require, on pain of forfeiting a sum not less than three dollars nor more than twenty, is valid.

Vandine, petitioner, 6 Pick. 187.

For decision upholding the validity of a regulation prohibiting the keeping of swine in a particular district of a city, see Commonwealth *v.* Patch, 97 Mass. 221.

But see Commonwealth *v.* Young, 135 Mass. 522, to effect that keeping of swine is, in certain cases, an "employment," and that in prohibiting its exercise the board must proceed under Pub. Stats., chap. 80, sects. 84, 87, 88, and not under sect. 18.

A private passageway about four feet wide, in the city of Boston, was laid out and maintained by the abutters thereon for the benefit of all their lots, which extended to the centre of the passageway. The land formerly belonged to the city of Boston, which reserved the right to lay a sewer through the whole of such passageway, and which for many years had kept the same clear, though it always claimed that it was not its duty to do so, and ceased to do so in the spring of 1891. *Held*, that an ordinance forbidding an abutter to allow filth to remain on that part of the passageway adjoining his land was not unreasonable and indefinite, and that it was no defence to a complaint for the violation thereof, that the defendant was required to remove matter which he had no agency in depositing in the passageway, or to do what he would not be obliged to do if he did not own land abutting on such passageway; or that the ordinance omitted to provide a time beyond which the filth should be allowed to remain; or that it required the defendant to do in part the work which the city had formerly done; or that another ordinance forbade the defendant from removing filth or refuse matter through the streets without a permit from the board of health, it appearing that such removal was intrusted by still another ordinance to the sanitary police; or that the complaint did not set out any of the defendant's right to use the passageway.

Cities and towns may adopt ordinances and by-laws for the preservation and promotion of the health of their inhabitants as an exercise of the police power.

The reasonableness or sufficiency of an ordinance or by-law is not to be tested always by its application to extreme cases.

Commonwealth *v.* Cutter, 156 Mass. 52.

P. S., 80, § 19.

To give notice of regulations.

The board shall give notice of all regulations made by it by publishing the same in some newspaper of its town, or, where there is no such newspaper, by posting them up in some public place in the town. Such notice shall be deemed legal notice to all persons. **1816**

See City of Salem *v.* Eastern Railroad Company, 98 Mass. 431, 443.

P. S., 80, § 20.

Board of health to examine into and abate nuisances, etc.

1797

The board shall examine into all nuisances, sources of filth and causes of sickness, within its town, or in any vessel within the harbor of such town, that may in its opinion be injurious to the health of the inhabitants, and shall destroy, remove, or prevent the same as the case may require.

P. S., 80, § 21.
Acts of 1894, 218, § 4.

To order certain nuisances, etc., abated by owner.

1797

The board shall order the owner or occupant at his own expense to remove any nuisance, source of filth, or cause of sickness, found on private property, within twenty-four hours, or such other time as it deems reasonable, after notice served as provided in the following section; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof.

An order of a board of health, under the Gen. Stats., chap. 26, sect. 8 (Pub. Stats., chap. 80, sect. 21), for the removal of a nuisance is valid without previous notice to the parties interested and opportunity for them to appear and be heard.

Salem *v.* Eastern Railroad Company, 98 Mass. 431.

An order of a board of health under the Gen. Stats., chap. 26, sect. 8 (Pub. Stats., chap. 80, sect. 21), for removing a nuisance need not prescribe a mode for the removal.

Salem *v.* Eastern Railroad Company, 98 Mass. 431.

An order of the board of health of a city, under the Gen. Stats., chap. 26, sect. 8 (Pub. Stats., chap. 80, sect. 21), directing the owner (or occupant) of land to remove a nuisance in a specific manner, is void.

Watuppa Reservoir *v.* Mackenzie, 132 Mass. 71.

A notice issued, under the Pub. Stats., chap. 80, sect. 21, by the board of health of a town to the occupant of certain premises, reciting that a nuisance, "consisting of a filthy hog-pen and stable," exists thereon, and ordering him "to abate the said nuisance on your estate, and also to remove your hogs outside the limits of the village, within forty-eight hours after the service hereof," is valid as an order to abate the nuisance, and is not rendered void by the direction to remove the hogs.

Commonwealth *v.* Alden, 143 Mass. 113.

In the absence of statutory authority neither the board of health nor the city council of a city has any power to erect a

dam on a person's land, without his consent, for the purpose of abating a nuisance existing on adjacent land.

Cavanagh *v.* Boston, 139 Mass. 426.

cf. Huse *v.* Amesbury, 163 Mass. 240.

A piggery in which swine are kept in such numbers that their natural odors fill the air thereabout and make the occupation of the neighboring houses and passage over the adjacent highways disagreeable is a nuisance, and on the trial of an indictment for maintaining such nuisance evidence that it is the custom in this Commonwealth to locate such establishments in populous localities and to tolerate them there is inadmissible.

Commonwealth *v.* Perry, 139 Mass. 198.

cf. Commonwealth *v.* Young, 135 Mass. 526.

See also Fay *v.* Whitman, 100 Mass. 76.

Commonwealth *v.* Sweeney, 131 Mass. 579.

In order to amount to a nuisance, it is not necessary that the corruption of the atmosphere should be such as to be dangerous to health, it is sufficient that the effluvia are offensive to the senses and render habitations uncomfortable.

Per Shaw, C. J., in Eames *v.* Worsted Co., 11 Met. 570–572.

As to conclusiveness of adjudications of a board of health on the existence of a nuisance see

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 446–452.

cf. Miller *v.* Horton, 152 Mass. 540, 545 *et seq.*

The following rules as to orders made under this section may be deduced from the opinion in

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 444.

The order addressed to a person directing him to remove a nuisance should describe the nature and locality of the nuisance.

The order should not direct in what mode the person should proceed to remove the nuisance, but should direct the end to be accomplished, leaving the party to adopt any effectual mode he may choose.

"The manifest purpose . . . is to enable the owner or occupant to remedy the evil in the mode least detrimental or offensive to himself and thus secure himself and his premises from the intrusion of the agents of the board of health."

P. S., 80, § 22.

Order for abatement, how served.

Such order shall be made in writing, and served by any person competent to serve a notice in a civil suit, personally on the owner, occupant, or his authorized agent; or a copy of the order may be left at the last and usual place of abode of the owner, occupant, or agent, if he is known and within the state. But if the premises are unoccupied and the residence of the owner or agent is unknown or without the state, the notice may be served

1849

by posting the same on the premises and advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

A notice issued, under the Pub. Stats., chap. 80, sect. 21, by the board of health of a town to the occupant of certain premises, ordering him to remove the nuisance existing thereon, may be served by a constable, although he is a member of the board of health, and signs the notice.

Commonwealth *v.* Alden, 143 Mass. 113.

It is not necessary that a complaint to recover the forfeiture provided by the Pub. Stats., chap. 80, sect. 21, for permitting a nuisance to remain on the premises after the time prescribed by the board of health of a town for its removal should be made by the town treasurer, but it may be made by an agent of the board of health, appointed under the Pub. Stats., chap. 80, sect. 16.

An omission in a complaint, under the Pub. Stats., chap. 80, sect. 21, for permitting a nuisance to remain on the premises after the time prescribed by the board of health of the town for its removal, to allege that the complainant is an agent of the board of health, he being in fact such agent, is at most a formal defect, which can be availed of only by a motion to quash.

Commonwealth *v.* Alden, 143 Mass. 113.

See also decisions and rules as to such orders, sect. 21, *sup.*

P. S., 80, § 23.

Owner not complying, board to remove nuisance at his expense.

1797

If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth, or cause of sickness, to be removed, and all expenses incurred thereby shall be paid by the owner, occupant, or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

"If the owner or occupant neglect to remove the nuisance, the board of health are then at liberty to enter upon the private property where it exists and take such measures as they may see fit for its removal."

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 444.

"The importance of the duty imposed upon the board of health, the necessity of prompt and decisive measures to protect the public health, require a wide discretion in the use of means by which 'to destroy, remove, or prevent' such cause of sickness. If it be necessary to the proper performance of their duty, they may, undoubtedly, in the exercise of their discretion,

resort to means and measures which affect injuriously other lands than those upon which the manifestation of the cause of sickness is found."

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 446.

cf., however, Huse *v.* Amesbury, 163 Mass. 240.

Infra, Pub. Stats., chap. 80, sect. 28.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," but who was not heard, and had no opportunity to be heard, such party is not concluded by the findings or adjudications of the board, and may contest all the facts upon which his liability is sought to be established.

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 447.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," the record of proceedings of the board is *prima facie* evidence of the existence of a nuisance which warranted the board in taking action and incurring expense for its removal; but where the defendant was not heard and had no opportunity to be heard, it is not evidence that the nuisance was caused by the defendant, and all the facts upon which it is sought to charge the defendant with liability are open to be tried and determined by the proofs in the case.

Salem *v.* Eastern Railroad Company, 98 Mass. 431, 451.

An action to recover expenses incurred in the removal of a nuisance should be brought in the name of the city or town and not in the names of the members of the board.

Salem *v.* Eastern Railroad Company, 98 Mass. 431.

See also Winthrop *v.* Farrar, 11 Allen, 398.

P. S., 80, § 24.

Board may notify occupants of unfit dwelling place to quit, etc.

The board, when satisfied upon due examination that a cellar, room, tenement, or building, in its town, occupied as a dwelling-place, has become, by reason of the number of occupants, want of cleanliness, or other cause, unfit for such purpose, and a cause of nuisance or sickness to the occupants or the public, may issue a notice in writing to such occupants, or any of them, requiring the premises to be put into a proper condition as to cleanliness, or, if they see fit, requiring the occupants to quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants forcibly and close up the premises, and the same shall not again be occupied

1850

as a dwelling-place without the consent in writing of the board. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit not less than ten nor more than fifty dollars.

P. S., 80, § 25.

When a party is convicted of a nuisance, board may order it destroyed.

1801

When a person is convicted on an indictment for a common nuisance injurious to the public health, the court in its discretion may order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health; and the form of the warrant to the sheriff or other officer may be varied accordingly.

P. S., 80, § 26.

Injunction may issue in cases of nuisance.

1827

The superior court, or a justice thereof, in term time or vacation, may, either before or pending a prosecution for a common nuisance affecting the public health, issue an injunction to stay or prevent the same until the matter is decided by a jury or otherwise; may enforce such injunction according to the course of proceedings in chancery; and may dissolve the same when the court or one of the justices shall think proper.

P. S., 80, § 27.

Board may make compulsory examination of premises, when.

1816

When the board thinks it necessary for the preservation of the lives or health of the inhabitants to enter any land, building, or premises, or vessel within its town, for the purpose of examining into and destroying, removing, or preventing a nuisance, source of filth, or cause of sickness, and the board or any agent thereof sent for that purpose is refused such entry, any member of the board or such agent may make complaint under oath to any justice of any court of record or to two justices of the peace of the county, stating the facts of the case so far as he has knowledge thereof; and said justice or justices may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such agent of the board, or to any constable of such town, commanding him to take sufficient aid, and at any reasonable time repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and to destroy, remove, or prevent the same, under the directions of the board.

P. S., 80, § 80.

Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, which are recoverable of a private person or corporation, may be sued for and recovered in an action of contract. **1849**

Expenses recoverable of individuals, how sued for.

P. S., 80, § 81.

Fines and forfeitures incurred under general laws, the special laws applicable to a town, or the by-laws and regulations of a town, relating to health, shall inure to the use of such town. **1849**

Fines and forfeitures to inure to use of towns.

Under Statutes of 1849, chap. 211, sect. 7, which provides that all fines and forfeitures, incurred under the general law or the special laws applicable to any town or city, or the ordiances, by-laws, and regulations of any town or city, relating to health, shall inure to the use of such town or city, as may be recovered by complaint in the name of the treasurer, it was held that such fines and forfeitures were recoverable only by complaint in the name of the treasurer of the city or town, and in no other way.

Commonwealth *v.* Fahey, 5 Cush. 408.

Under sect. 26, chap. 28 of the Pub. Stats., the city marshal or other police officer, or the city treasurer, may prosecute for all fines and forfeitures which may inure to the city.

The ordinances and by-laws of the city of Boston relating to burying-grounds and the burial of the dead were held to be regulations relating to health within the meaning of the above statute.

Commonwealth *v.* Fahey, 5 Cush. 411.

WET, ROTTEN, AND SPONGY LANDS.

P. S., 80, § 28.
Acts of 1887, 338, § 1.
Acts of 1894, 218, § 4.

Lands in a city or town which are wet, rotten, or spongy, or covered with stagnant water, so as to be offensive to persons residing in the vicinity thereof, or injurious to health, shall be deemed to be a nuisance, and the board of health of such city or town may, upon petition and hearing, abate such nuisance in the manner provided in the following sections, but no such nuisance **1868**

Lands injurious to health, etc., deemed a nuisance.

shall be abated by a board of health of a city or town without a previous appropriation therefor by such city or town if the expense of such abatement will exceed the sum of two thousand dollars.

On a petition for a writ of *certiorari* to quash the proceedings of the board of health of a city, assessing the expense of abating a nuisance under the Statute of 1868, chap. 160 (Pub. Stats., chap. 80, sect. 28 *et seq.*), the record showed a petition, addressed to the board of health, which complained of large quantities of water standing in an open drain between two streets, from which arose such unhealthy odors as to cause great sickness in the neighborhood, and prayed for a hearing; a reference of the same to the next city government; a vote of the board of health, the next year, to view the premises; a view taken; an order that the city engineer, under direction of a committee, be directed to widen, straighten and deepen a watercourse between the two streets, and that the clerk be instructed to notify abutters on the watercourse of a hearing on a certain day, under the Statute of 1868, chap. 160 (Pub. Stats., chap. 80, sects. 28 *et seq.*); a warrant issued by the clerk to a constable to notify abutters of the intention of the board of health to enter upon the premises for the purpose of widening, deepening and straightening the brook, and that a hearing would be given at a time and place named, to all parties interested in the matter, as to the necessity and mode of abating the nuisance caused by the brook and the question of damages, and of the assessment and apportionment of the expenses thereof, and a notice setting forth these things and stating that it was in accordance with the Statute of 1868, chap. 160 (Pub. Stats., chap. 80, sect. 28 *et seq.*). *Held*, that it sufficiently appeared that the board was attempting to act under this Statute. *Held, also*, that the petition was sufficient to give the board jurisdiction.

Grace *v.* Newton Board of Health, 135 Mass. 490.

A petition to the board of health of a city described a nuisance as owing "to large quantities of stagnant water standing in an open drain between two streets of the city." The board of health issued a notice that it was acting under the Statute of 1868, chap. 160 (Pub. Stats., chap. 80, sects. 28 *et seq.*), and abated the nuisance. On a petition for a writ of *certiorari* to quash the proceedings of the board of health, it did not appear whether the drain was a public or a private one, nor for what purpose it was made, and it appeared to be a watercourse. *Held*, that it could not be said that the nuisance was not such as could be abated under the Statute of 1868, chap. 160 (Pub. Stats., chap. 80, sects. 28 *et seq.*), and that it was too late to take this objection.

Grace *v.* Newton Board of Health, 135 Mass. 490.

Under the Statute of 1868, chap. 160 (Pub. Stats., chap. 80, sects. 28 *et seq.*), a board of health may act by a committee in abating a nuisance.

Grace *v.* Newton Board of Health, 135 Mass. 490.

"It [the Statute of 1868, chap. 160, Pub. Stats., chap. 80, sects. 28 *et seq.*] contemplates that lands may be entered upon which are not themselves wet, rotten, spongy or covered with stagnant water, and excavations, embankments and drains made thereupon, in order to abate the nuisance, and that proceedings under the statute are in the nature of taking private property for public use."

Per Field, J., in Grace *v.* Newton Board of Health, 135 Mass. 490, 492.

Where a nuisance is artificially created by emptying the sewage of dwelling houses through a private drain in a private way upon the surface of such way and of abutting private land, the board of health has no authority when acting under Pub. Stats., chap. 80, sects. 28 *et seq.*, to abate such nuisance by extending such private drain through such abutting private land to a brook thereon and by cleaning out the brook so that it would carry off the sewage.

Huse *v.* Amesbury, 163 Mass. 240.

In the opinion in this case it is suggested that the nuisance might have been dealt with under Pub. Stats., chap. 80, sects. 18-25.

P. S., 80, § 29.
Acts of 1894, 218, § 4.

Persons injuriously affected, etc., may apply to board for abatement.

Any person claiming to be injuriously affected by such nuisance may, by petition describing the premises upon which it is alleged to exist, and setting out the nature of the nuisance complained of, apply to the board for its abatement; thereupon such board shall proceed to view the premises, and examine into the nature and cause of such nuisance.

P. S., 80, § 30.
Acts of 1894, 218, § 4.

Board to appoint hearing, etc.

Upon such examination the board if of opinion that the prayer of the petition or any part thereof should be granted, shall appoint a time and place for a hearing, and before the time so appointed shall cause reasonable notice of the time and place to be given to the petitioners, the persons whose lands it may be necessary to enter upon to abate the nuisance, and any other persons who may be affected by the proceedings, and, except in those cities and towns in which the mayor and aldermen and

1868

selectmen constitute the board of health, to the mayor or the chairman of the selectmen, that they may be heard upon the necessity and mode of abating such nuisance, and the questions of damages, and of the assessment and apportionment of the expenses of the abatement.

An order of the board of health of a city under Statute of 1868, chap. 160 (Pub. Stats., chap. 80, sects. 28 *et seq.*), directing the owner of land to remove a nuisance, is void if passed without a previous notice and hearing.

Watuppa Reservoir *v.* Mackenzie, 132 Mass. 71.

P. S., 80, § 31.
Acts of 1894, 218, § 4.

Form of notice, and how served.

1868

Such notice shall be in writing, and may be served, by any person competent to serve civil process, upon the mayor or chairman of the selectmen, the petitioners, the owner or occupant of any land upon which it may be necessary to enter, or which may be benefited by the abatement, or the authorized agent of such owner or occupant, or by leaving an attested copy of such notice at the last and usual place of abode of such persons; but if the lands are unoccupied, and the owner or agent is unknown, or out of the state, the notice to such owner may be served by posting an attested copy thereof upon the premises, or by advertising in one or more public newspapers in such manner and for such length of time as the board may direct.

P. S., 80, § 32.
Acts of 1887, 338, § 3.
Acts of 1894, 218, § 4.

Board after hearing may abate nuisance. Manner of such abatement. Damages, and upon whom assessed.

1868

At the time and place appointed for the hearing, the board shall hear the parties, and after the hearing may cause such nuisance to be abated, according to its or his discretion; and for that purpose may enter and make such excavations, embankments, and drains upon any lands, and under and across any streets and ways, as may be necessary for such abatement; and shall also determine in what manner and at whose expense the improvements made shall be kept in repair, and shall estimate and award the amount of damage sustained by and benefit accruing to any person by reason of such improvements,

and what proportion of the expense of making and keeping the same in repair shall be borne by the city or town and by any person benefited thereby. The damages so awarded shall be paid by the city or town, and there shall be assessed to the several persons benefited by such improvements their proportionate part, to be ascertained as before provided, of the expense of making and keeping in repair such improvements, and the same shall be included in the next city or town taxes of such persons, and shall be a lien upon the real estate benefited thereby, and be collected in the same manner as other taxes upon real estate. Any person aggrieved by the assessment so made may at any time within three months after receiving notice thereof, apply for a jury; such application shall be made in like manner and the proceedings thereon shall be the same as in case of lands taken for laying out of highways: *provided*, that before making his application, the party shall give one month's notice in writing to the selectmen or mayor and aldermen of his intention so to apply, and shall therein particularly specify his objections to the assessment, to which specification he shall be confined upon the hearing by the jury.

Party aggrieved may apply for a jury, but must give notice.

An assessment cannot be levied for expenses incurred by a board of health under the Statute of 1868, chap. 160 (Pub. Stats., chap. 80, sects. 28 *et seq.*), upon a person to whom notice of the hearing provided for in sect 3 (Pub. Stats., chap. 80, sect. 30) is not given, although he has knowledge of the doing of the work whereby the expenses are incurred.

Grace *v.* Newton Board of Health, 135 Mass. 490.

It is no ground for a writ of *certiorari* to quash an assessment levied for expenses incurred under the Statute of 1868, chap. 160 (Pub. Stats., chap. 80, sects. 28 *et seq.*), that the expenses were not assessed proportionally upon all persons benefited, or that items were included in the expenses which ought to have been excluded.

Grace *v.* Newton Board of Health, 135 Mass. 490.

If a board of health has given notice of a hearing under the Statute of 1868, chap. 160, sect. 3 (Pub. Stats., chap. 80, sect. 30), it need not give a new notice of its intention to make an assessment under sect. 5 (Pub. Stats., chap. 80, sect. 32).

Grace *v.* Newton Board of Health, 135 Mass. 490.

A report of a committee of the board of health of a city, upon the assessment of damages and benefits sustained by the abatement of a nuisance, under the Statute of 1868, chap. 160 (Pub.

Stats., chap. 80, sects. 28 *et seq.*), was accompanied by orders drawn in accordance with the report, and by warrants upon the city treasurer for the collection of assessments. The record showed that the report was accepted and the orders and warrants adopted. *Held*, that the adoption of the report sufficiently appeared.

Grace *v.* Newton Board of Health, 135 Mass. 490.

Upon proceedings by the board of health pursuant to Pub. Stats., chap. 80, sects. 28–33, for the abatement of a nuisance consisting of wet and spongy lands injurious to health, the measure of damages for land upon which it has been necessary to enter to abate the nuisance is the difference between its fair market value before the act of the board and such value afterwards.

Driscoll *v.* Taunton, 160 Mass. 486.

Upon a petition for the assessment of damages to land in consequence of proceedings pursuant to the Pub. Stats., chap. 80, sects. 28–33, for the abatement of a nuisance consisting of wet and spongy lands injurious to health, any nuisance on the land upon which it was necessary to enter, in order to be chargeable to the city or town, must be the result of the act of the board of health, and, unless such act results in a nuisance, evidence of a subsequent nuisance is immaterial.

Driscoll *v.* Taunton, 160 Mass. 486.

For ruling as to cases in which a landowner may be estopped from claiming damages by reason of acts of board of health, see

Driscoll *v.* Taunton, 160 Mass. 486.

P. S., 80, § 33.
Acts of 1894, 218, § 4.

Board to make return of doings to town clerk.

1868

The board shall within thirty days after the abatement of any nuisance in the manner hereinbefore provided, make return to the city or town clerk of its or his doings in the premises, which return shall be by him recorded in the city or town records.

P. S., 80, § 34.
Acts of 1894, 218, § 4.

If board unreasonably refuses to act, superior court may appoint commissioners.

1868

If the board unreasonably refuses or neglects to proceed in the matter of such petition, the petitioner may apply by petition to the superior court or any justice thereof, who, upon a hearing and good cause shown, may appoint three commissioners, who shall proceed in the manner hereinbefore provided.

Acts of 1887, 338, § 2.
Acts of 1894, 218, § 4.

Party aggrieved may appeal to superior court, and must give notice to board or health officers.

Any person entitled to notice of the time and place of hearing upon a petition to the board of health under the provisions of section twenty-eight of chapter eighty of the Public Statutes as prescribed by section thirty of said chapter, who is aggrieved by the decision of such board that the land described in such petition is a nuisance, may appeal therefrom to the superior court, who may hear and determine the matter of such appeal, and during such appeal all proceedings in regard to such nuisance by such board shall be stayed. The party so appealing shall within twenty-four hours after such decision give written notice to said board of his intention so to appeal and within seven days shall present a petition to the superior court setting forth the grievances complained of, and the action of the board of health thereon, and shall thereupon enter into such recognizance before said court in such sum and with such surety or sureties as shall be ordered.

P. S., 80, § 35.
Acts of 1894, 218, § 4.

Persons aggrieved in award of damages may apply for jury.

Any person aggrieved by the decision of the board, or commissioners, in their estimate and award of damages, may make complaint to the county commissioners for the county at any time within one year after the return to the city or town clerk; whereupon the same proceedings shall be had as in cases where persons or parties are aggrieved by the award of damages by selectmen for land taken for a town way.

1868

The fact that Pub. Stats., chap. 80, sect. 35, provide that any person aggrieved by the decision of the board of health in its estimate and award of damages upon proceedings brought pursuant to Pub. Stats., chap. 80, sects. 28–33, for the abatement of a nuisance, consisting of wet and spongy lands injurious to health, "may make complaint to the county commissioners for the county," does not prevent such person from resorting to the superior court under the provisions of Pub. Stats., chap. 49, sect. 105.

Driscoll *v.* Taunton, 160 Mass. 486.

APPEAL TO COUNTY COMMISSIONERS.

P. S., 80, § 36

Persons aggrieved by refusal of board to abate a nuisance may appeal to county commissioners.

1866

Any person aggrieved by the neglect or refusal of the board of health in a city or town to pass all proper orders abating a nuisance or nuisances may appeal to the county commissioners, who may hear and determine the matter of such appeal, and exercise in such case all the powers which the board might exercise.

P. S., 80, § 37.

Party appealing to give notice, etc. Other proceedings.

1866

The party so appealing shall, within twenty-four hours after such neglect or refusal, give written notice to the opposite party of his intention so to appeal, and within seven days shall present a petition to some one of the commissioners, setting forth the grievances complained of, and the action of the board of health thereon, and shall thereupon enter into such recognizance before the commissioners, in such sum, and with such surety or sureties, as they shall order.

P. S., 80, § 38.

Cost and expenses, how paid.

1866

Each commissioner, when acting under the provisions of this chapter, shall tax three dollars per day for time, and five cents a mile for travel to and from the place of meeting, to be paid into the county treasury; and such costs shall in the first instance be paid by the appellant, and the commissioners may award that such costs and any other costs of the proceedings shall be paid by either party, as in their judgment justice shall require.

DISEASES DANGEROUS TO THE PUBLIC HEALTH, LAWS FOR PREVENTING THEIR SPREAD.

P. S., 80, § 78.
Acts of 1884, 98, § 1.
Acts of 1890, 102.

Householder to notify board of health of case of infectious disease.

When a householder knows that a person within his family or house is sick of small-pox, diphtheria, scarlet fever or any other infectious or contagious disease dangerous to the public health, he shall immediately give

notice thereof to the board of health of the city or town in which he dwells, and upon the death, recovery or removal of such person, such of the rooms of said house and such of the articles therein as, in the opinion of the board of health, have been subjected to infection or contagion shall be disinfected by such householder to the satisfaction of said board of health. Any person neglecting or refusing to comply with either of the above provisions shall be punished by a fine not exceeding one hundred dollars.

Certain rooms and articles to be disinfected.

Penalty for neglect or refusal.

P. S., 80, § 79.
Acts of 1884, 98, § 2.
Acts of 1891, 188.

When a physician knows that a person whom he is called to visit is infected with small-pox, diphtheria, scarlet fever or any other disease dangerous to public health, he shall immediately give notice thereof in writing over his own signature, to the selectmen or board of health of the town; and if he refuses or neglects to give such notice he shall forfeit for each offence not less than fifty nor more than two hundred dollars.

Physicians to give notice.

1827

Penalty.

Acts of 1884, 98, § 3.

The boards of health in the several cities and towns shall cause a record to be kept of all reports received in pursuance of the preceding sections and such record shall contain the names of all persons who are sick, the localities in which they live, the diseases with which they are affected, together with the date and the names of the persons reporting any such cases. The boards of health shall give the school committee immediate information of all cases of contagious diseases reported to them according to the provisions of this act.

Records to be kept.

School committee to be notified.

Acts of 1884, 98, § 4.

The secretary of the Commonwealth shall furnish the boards of health with blank books for the record of cases of contagious diseases as above provided.

Secretary to furnish blank record books.

Acts of 1883, 138, § 1.
Acts of 1886, 101, § 4.

When the board of health of any city or town has had notice of the occurrence of a case of small-pox in such

Local boards notify state board of cases of small-pox.

city or town, such board of health shall, within twenty-four hours after the receipt of such notice, notify the state board of health of the same, and the secretary of said state board shall forthwith transmit a copy of the notice so received to the state board of lunacy and charity.

Acts of 1893, 302, § 1.

Local Board of Health to notify State Board of cases of small-pox, etc.

When the board of health of any city or town has had notice of the occurrence of a case of small-pox or of any other disease dangerous to the public health in such city or town, such board of health shall, within twenty-four hours after the receipt of such notice, notify the state board of health of the same.

Acts of 1883, 138, § 2.
Acts of 1893, 302, § 2.

Forfeiture of claim for expenses, if local board neglects to notify.

If the board of health of the city or town, in which a case of small-pox or of any other disease dangerous to the public health has occurred, refuses or neglects to send a notice as required in section one [of chapter 302 of the Acts of 1893], such city or town shall forfeit its claim upon the commonwealth, for the payment of any expenses which may be incurred, as provided in section eighty-three of chapter eighty of the Public Statutes.

Acts of 1885, 198, § 1.

School committees not to allow children sick with contagious diseases to attend school. Certificate of recovery required.

The school committees shall not allow any pupil to attend the public schools while any member of the household to which such pupil belongs is sick of small-pox, diphtheria, or scarlet fever, or during a period of two weeks after the death, recovery or removal of such sick person; and any pupil coming from such household shall be required to present, to the teacher of the school the pupil desires to attend, a certificate, from the attending physician or board of health, of the facts necessary to entitle him to admission in accordance with the above regulation.

P. S., 80, § 39.

Board may permit removal of infected articles, etc.

The board of health of a town may grant permits for the removal of any nuisance, infected articles, or sick person, within the limits of its town, when it thinks it safe and proper so to do.

P. S., 80, § 40.

When a person coming from abroad or residing in a town in this state is infected, or lately has been infected, with the plague or other sickness dangerous to the public health, except as is otherwise provided in this chapter, the board shall make effectual provision in the manner which it judges best for the safety of the inhabitants by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessaries, which shall be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; or if he is not an inhabitant of any town, at the charge of the commonwealth.

Board to make provision for persons infected.

1797

Notice should be given to the town to which the infected person belongs, before commencing an action to recover the expenses incurred by furnishing him with assistance and necessaries.

Springfield *v.* Worcester, 2 Cush. 52.

The following notice, sent by the selectmen of Springfield to the selectmen of Worcester, was held to be sufficient: —

SPRINGFIELD, May 25, 1846.

GENTLEMEN: — James E. Belden, a colored man, came here, not far from the first of this month, diseased with the small-pox. The expenses of his sickness have been borne by this town, the man himself having no means of paying them. According to the information we have, the town of Worcester is liable for these expenses. We have therefore thought it our duty (although not legally obliged so to do) to notify you of the case, that you may take such measures in regard to it as you may deem proper. We are told Henry W. Miller of your place is well acquainted with Belden.

The physicians who have had charge of the case state that their patient will probably recover. His disease has been the worst form of small-pox.

In behalf of the selectmen of Springfield,

HENRY MORRIS, *Chairman.*

TO THE SELECTMEN OF WORCESTER.

Springfield *v.* Worcester, 2 Cush. 52.

Under the Pub. Stats., chap. 80, sects. 40, 41, 75, the board of health of a town has no authority to take possession of a dwelling-house and the furniture therein, without the consent of the owner and occupant and to his exclusion, and use the house as a hospital for a person found therein who is infected with a contagious disease, and is too sick to be removed without danger to his health; and the owner cannot maintain an action of contract against the town for the use and occupation of the house during the time it was so held by the board of health.

Spring *v.* Hyde Park, 137 Mass. 554.

A member of the board of health of a town has no authority, against the consent of the owner or occupant, to take possession

of a dwelling-house in which a contagious disease exists, and of the furniture therein, to the exclusion of such owner or occupant, and to carry away and destroy portions of the furniture, or to station a person on the premises with instructions to prevent ingress to and egress from the same, except in the manner pointed out in the Pub. Stats., chap. 80.

In an action against a member of the board of health of a town, who unlawfully took possession of the furniture in a house in which a contagious disease existed, and destroyed it, the defendant asked the judge to rule that the measure of damages was the market value of the property in its infected condition. The judge refused so to rule, and instructed the jury that the plaintiff was entitled to recover what the property was worth at the time it was taken, taking into consideration how much the value had been affected by its exposure to infection. *Held*, that the defendant had no ground of exception.

Brown *v.* Murdock, 140 Mass. 314.

The board of health of a city cannot, without the consent of the owner, lawfully establish and use premises as a hospital for patients sick with the small-pox, except under a warrant issued in accordance with the provisions of Pub. Stats., chap. 80, sect. 43.

An owner of land, who is not in possession and has no right of possession thereof, cannot maintain an action of trespass *quare clausum fregit*, but may maintain an action for an injury to the reversion.

The owner of a house in a city, which, while in the possession of a tenant at will, is taken and used, without the owner's consent, by the board of health of the city as a hospital for parties sick with the small-pox, may maintain an action against the members of the board for the injury to his reversion, if it appears that such use of the house diminished its rentable value.

A tenant at will in possession of a house in a city cannot, as against the rights of the owner, authorize the board of health of the city to establish in the house a hospital for patients afflicted with an infectious disease, and to maintain such a hospital there to the damage of the reversion.

Hersey *v.* Chapin, 162 Mass. 176.

The following rules for the guidance of local boards of health in dealing with cases of disease dangerous to the public health may be deduced from the foregoing decisions: —

In case it is desired to isolate the sick person, he should be removed to a hospital to be provided by the board, except in the case where he cannot be so removed without danger to his health.

Even where the condition of the sick person is such that he cannot be removed without danger to his health, the board has no authority to establish the place where the sick person is as a hospital, without the consent of the owner thereof.

In case the board desires to provide a hospital to which to remove such cases or to establish as a hospital the place where the sick person is, and is unable to hire the building for that purpose, it should procure the issuance of a warrant under sect. 43.

P. S., 80, § 41.

If infected person cannot be removed, others may be.

If the infected person cannot be removed without danger to his health, the board shall make provision for him, as directed in the preceding section, in the house in which he may be; and may cause the persons in the neighborhood to be removed, and take such other measures as it judges necessary for the safety of the inhabitants.

1797
1838

P. S., 80, § 42.

Persons may be stationed in places bordering on other states to examine, etc.

The board of health of a town near to or bordering upon either of the neighboring states may appoint, by writing, suitable persons to attend at places by which travellers may pass from infected places in other states; who may examine such travellers as it suspects of bringing any infection dangerous to the public health, and if need be may restrain them from travelling until licensed thereto by the board of health of the town to which they may come. A traveller coming from such infected place, who without such license travels within the state (except to return by the most direct way to the state whence he came), after he has been cautioned to depart by the persons so appointed, shall forfeit a sum not exceeding one hundred dollars.

1797

P. S., 80, § 43.

Two justices may issue warrant to remove sick persons, etc.

Two justices of the peace may, if need be, make out a warrant directed to the sheriff of the county or his deputy, or to any constable, requiring them under the direction of the board to remove any person infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants and other necessaries, for the accommodation, safety and relief of the sick.

1797

See Hersey *v.* Chapin, 162 Mass. 176. *Supra*, sect. 40 and note.

P. S., 80, § 44.

One justice may issue warrant to secure infected articles, etc.

When, upon the application of the board, it appears to a justice of the peace that there is just cause to suspect that baggage, clothing or goods found within the town are

infected with the plague or other disease dangerous to the public health, he shall, by warrant directed to the sheriff or his deputy, or to any constable, require him to impress so many men as said justice may judge necessary to secure such baggage, clothing or goods, and to post said men as a guard over the house or place where such articles are lodged; who shall take effectual care to prevent persons from removing or coming near the same until due inquiry is made into the circumstances.

Sheriff may impress aid.
1797

P. S., 80, § 45.

The justice may by the same warrant, if it appears to him necessary, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may cause them to be removed thereto, or otherwise detained, until, in the opinion of the board, they are freed from infection.

Officers may take houses and stores for safe keeping of goods, etc.
1797

P. S., 80, § 46.

The officers, in the execution of the warrant, shall, if need be, break open any house, shop, or other place, mentioned in the warrant, where such articles are; and may require such aid as is necessary to effect the execution of the warrant. Whoever neglects or refuses to assist in the execution of the warrant, after being commanded to assist by either of said officers, shall forfeit a sum not exceeding ten dollars.

May break open houses, shops, etc., and command aid.
1797

P. S., 80, § 47.

The charges of securing such articles, and transporting and purifying the same, shall be paid by the owners, at such rates and prices as may be determined by the board.

Expenses to be paid by owners of goods.
1797

P. S., 80, § 48.

When a sheriff or other officer impresses or takes up any houses, stores, lodging, or other necessaries, or impresses men, as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town in which such persons or property are so impressed.

Town to make compensation for houses, etc., or services impressed.
1797

P. S., 80, § 49.

When a person confined in a common jail, house of correction or workhouse, has a disease which, in the opinion of the physician of the board or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall by its order in writing direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until its further order. If such person recovers from the disease, he shall be returned to said prison or other place of confinement.

Removal of prisoners attacked with disease.

1816

P. S., 80, § 50.

If the person so removed is committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

Return of removal to be made to court. Such removal not an escape.

1816

P. S., 80, § 70.

Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health.

Hospitals may be provided by towns.

1701

P. S., 80, § 71.

Such hospitals shall be subject to the orders and regulations of the board, or of a committee of the town appointed for that purpose.

To be under orders of board of health.

P. S., 80, § 72.

No such hospital shall be established within one hundred rods of an inhabited dwelling-house situated in an adjoining town, without the consent of such town.

Not to be near dwelling-house, etc.

1776

P. S., 80, § 73.

Whoever occupies or uses a building for a hospital in a part of a city or town prohibited by the mayor and aldermen or selectmen shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such

Not to be occupied without authority. Injunction.

1870

building, and in like proportion for a portion of a month; and the supreme judicial court in term time or vacation may issue an injunction to prevent such occupancy or use.

P. S., 80, § 74.

Physicians, etc., in hospital, subject to board of health.

1792

When a hospital is established, as provided in section seventy, the physician, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits thereof, and all furniture and other articles used or brought there, shall be subject to such regulations as may be made by the board of health or the committee appointed for that purpose.

P. S., 80, § 75.

If dangerous disease breaks out, board to provide hospital, etc.

1701
1837
1848

When a disease dangerous to the public health breaks out in a town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not admit of his removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board as before provided. [See cases cited and note under Pub. Stats., chap. 80, sect. 40, p. 27.]

P. S., 80, § 76.

Selectmen to give notice of infected places.

1792
1838
1873

When such disease is found to exist in a town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety. And whoever obstructs the selectmen, board of health, or its agent, in using such means to prevent the spreading of the infection, or wilfully removes, obliterates, defaces, or handles the red flags or other signals so displayed, shall forfeit for each offence not less than ten nor more than one hundred dollars.

P. S., 80, § 77.

Penalty on persons in hospitals for violating regulations.

If a physician or other person in any of the hospitals or places of reception before mentioned, or who attends, approaches, or is concerned with the same, violates any regulation lawfully made in relation thereto, either with respect to himself or his or any other person's property, he shall for each offence forfeit not less than ten nor more than one hundred dollars.

1792
1838

P. S., 80, § 82.

Certain provisions not to apply to small-pox.

The provisions of sections forty, forty-one, seventy-five, seventy-six, and seventy-seven, of chapter eighty, Public Statutes, so far as they confer authority for the removal of patients from their homes, except in cases of persons residing in boarding houses, hotels, or where two or more families occupy the same dwelling, and other cases, where in the opinion of the board and the attending physician the case cannot be properly isolated, shall not apply to small-pox. [See cases cited and note under Pub. Stats., chap. 80, sect. 40, p. 27.]

1838
1840
1848
1872

Acts of 1894, 511, § 1.

Hospitals for contagious diseases, how provided in cities.

In any city in which no suitable hospital accommodations have been provided for the care and treatment of persons suffering from contagious diseases dangerous to the public health, the board of health of such city may address a communication to the mayor thereof, stating that in the opinion of said board the safety of the inhabitants of the city demands that suitable hospital accommodations should be provided for the reception and treatment of persons suffering from such diseases, other than small-pox and those of a venereal nature. The mayor shall forthwith transmit such communication to the city council, and the city council shall forthwith order such hospital accommodations to be provided, and shall make the necessary appropriations therefor.

Acts of 1894, 511, § 2.

Appropriations for contagious disease hospitals, how made and expended.

Every city in which hospital accommodations have been provided in accordance with the provisions of this act shall make an annual appropriation for the mainten-

ance of such hospital accommodations, and said appropriation shall be expended under the direction of the board of health, unless otherwise ordered by the city government.

Acts of 1894, 511, § 3.

Venereal diseases; no discrimination to be made under certain conditions.

No discrimination shall be made against the treatment of venereal diseases in the out patient department of any general hospital supported by taxation in any city where special hospitals, excluding hospitals connected with penal institutions, are not provided for the treatment of such diseases at public expense, and said hospital may establish a separate ward for the treatment of such cases.

Acts of 1895, 400.

Cities to provide for treatment of venereal diseases.

Every city shall provide for the treatment, either in a hospital or as out patients, of indigent persons suffering from contagious or infectious venereal diseases.

P. S., 80, § 83.

Expenses, how to be paid.

1874

All reasonable expenses which have been heretofore or may hereafter be incurred by the board of health of a city or town, in making the provision required by law for a person infected by the small-pox or other disease dangerous to the public health, shall be paid by the person himself, his parents, or master, if able; otherwise by the town in which he has a legal settlement; and if he has no settlement, by the Commonwealth, in which case the bills therefor shall be approved by the state board of lunacy and charity. [See Springfield *v.* Worcester, 2 Cush. 52.]

P. S., 86, §§ 25, 26.
Acts of 1885, 211, § 1.

Small-pox patients not to be sent to State almshouse: how provided for.

1865
1879

No city or town officer shall be allowed to send to the almshouse* any person infected with small-pox or other disease dangerous to the public health, or any other sick person whose health would be endangered by removal; but all such persons liable to be maintained by the Commonwealth shall be supported during their sickness by the city or town in which they are taken sick, and notice of such sickness shall be given to the state board,† which

* State Almshouse at Tewksbury.
† State Board of Lunacy and Charity.

may examine the case and order the removal of the patient if it deems it expedient: *provided*, that the notice herein required, in cases of sick persons whose health would be endangered by removal, shall be signed by the overseers of the poor, or by such officer as they see fit by special vote to appoint, and they or he shall certify, after a personal examination that in their or his opinion such removal of the person named in such notice, at the time of his application for aid, would endanger his health.

Acts of 1885, 211, § 1.

Expenses to be reimbursed by Commonwealth.

The expense incurred by a city or town under the provisions of the preceding section, after notice has been given as therein required, shall be reimbursed by the Commonwealth, the bills for such support having been approved by the state board* or by some person designated by it, the bills so audited being endorsed with a distinct declaration that the amount charged for has been paid from the city or town treasury.

Acts of 1885, 211, § 1.

Expenses of state pauper cases.

The expense of thus supporting the person who is a state pauper, written notice having been given to the state board * within sixty days from the time when such aid shall be first given, shall be paid by the Commonwealth, reference being had to the expense of supporting such a person at the almshouse,† if thereto committed.

Acts of 1891, 420, § 1.

Treatment of inmates afflicted with syphilis.

Any person who is confined in, or an inmate of, any state penal or charitable institution, a common jail, house of correction or municipal or town almshouse, who shall have the disease known as syphilis, shall at once be placed under proper medical treatment for the cure of such disease, and when in the opinion of the attending physician it is necessary for the proper treatment thereof, or that such disease is contagious, so as to be dangerous to the health and safety of other prisoners or inmates in such institution, the persons under treatment shall be

* State Board of Lunacy and Charity.

† State Almshouse at Tewksbury.

isolated from such other prisoners or inmates until the contagious stage of such disease has passed, or until the time when in the opinion of the attending physician such isolation is unnecessary.

Acts of 1891, 420, § 2.

Such persons may be detained till danger of infection has disappeared.

When at the expiration of the sentence of any person who is confined in, or is an inmate of, any of the institutions named in section one of this act, such person shall then have the disease known as syphilis in its contagious or infectious symptoms, or in the opinion of the attending physician of such institution, or of such physician as the authorities thereof may consult, would cause the discharge of such person to be dangerous to public health and safety, such person shall be placed under proper medical treatment and kept suitably cared for as provided in section one of this act, in the institution where he has been confined, until such time as in the opinion of the attending physician such contagious and infectious symptoms shall have disappeared, and the discharge of the patient shall not endanger the public health. The expense of his support not exceeding three dollars and fifty cents a week shall be paid by the city or town where he has a legal settlement, after notice to the overseers of the poor of such city or town, or, if he is a state pauper, after notice to the state board of lunacy and charity, of the expiration of his sentence, and of his condition.

Expense of their support, how paid.

1810*

VACCINATION.

Acts of 1894, 515, § 1.

Parents, etc., to cause children to be vaccinated. Penalty for neglect.

1855
1894

Parents and guardians shall cause their children and wards to be duly vaccinated before they attain the age of two years, except as provided in section two of this act. For every year's neglect the party offending shall forfeit the sum of five dollars.

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* Chapter 117, section 2, Acts of 1809, 1810, and dated March 6, 1810, provided for "inoculation of the inhabitants with the cow-pox, under the direction of the town board of health, or a committee chosen for that purpose."

Acts of 1894, 515, § 2.

Certain children may be exempt.

All children who shall present a certificate signed by a regular practicing physician that they are unfit subjects for vaccination shall not be subject to the provisions of section nine of chapter forty-seven of the Public Statutes excluding unvaccinated children from public schools, and all children upon such a certificate shall be exempted from the provisions of this act, and the parents and guardians of such children shall not be liable to the penalties imposed by section one of this act.

Acts of 1894, 515, § 3.

Boards of health to enforce vaccination. Penalty for neglect. 1855 1894

The board of health in any city or town shall require and enforce the vaccination and re-vaccination of all the inhabitants thereof whenever in the opinion of said board the public health or safety requires such action. Every person over twenty-one years of age, not under guardianship, who neglects to comply with such requirement shall forfeit the sum of five dollars.

Acts of 1894, 515, § 4.

To provide means. 1855 1894

The board of health in any city or town shall furnish the means of free vaccination or re-vaccination to all the inhabitants thereof whenever in the opinion of said board the public safety requires it.

Acts of 1894, 515, § 5.

Inmates of factories, etc., to be vaccinated. 1855 1894

Incorporated manufacturing companies, superintendents of almshouses, state reform schools, industrial schools, lunatic hospitals, and other places where the poor or sick are received, masters of houses of correction, jailers, keepers of prisons, the warden of the state prison, and superintendents or officers of all other institutions supported or aided by the state, shall, at the expense of their respective establishments or institutions, cause all the inmates thereof to be vaccinated or re-vaccinated whenever in the opinion of the board of health, in the city or town in which such establishments or institutions are situated, the health of the inmates thereof or the public safety require such action.

P. S., 47, § 9.

School committee not to allow unvaccinated children to attend public schools.

1855

The school committee shall not allow a child who has not been duly vaccinated to be admitted to or connected with the public schools. [But see 1894, 515, § 2, p. 37.]

Acts of 1894, 355.

Vaccine institutions to be under supervision of state board of health.

All vaccine institutions in the Commonwealth shall be under the supervision of the state board of health.

LYING-IN HOSPITALS.

P. S., 80, § 56.

Selectmen may license lying-in hospitals, on certificate, etc.

1876

The selectmen of a town may license any person to establish or keep therein a lying-in hospital, hospital ward, or other place for the reception, care and treatment of women in labor, if the board of health shall first certify to the selectmen that the person applying for such license is in its judgment a suitable person, and that from its inspection and examination of such hospital, hospital ward, or other place aforesaid, the same is suitable, and properly arranged and provided for such business.

P. S., 80, § 57.

Licenses to be for two years, but revocable.

1876

Such license shall continue in force for two years, subject, however, to revocation by the selectmen.

P. S., 80, § 58.

Hospitals subject to visitation, etc.

1876

Every such hospital, hospital ward, or other place shall be subject to visitation and inspection at any time by the board of health, the chief of police, and the selectmen; and if it receives in a year more than six women as patients in labor, it shall also be subject to like visitation and inspection by the state board of health.

P. S., 80, § 59.

Penalties for keeping hospital without license.

1876

Whoever establishes or keeps or is concerned in establishing or keeping a hospital, hospital ward, or other place for the purpose mentioned in section fifty-six, or is engaged in any such business, without such license, shall for the first offence be punished by a fine not exceeding

five hundred dollars, one half of which shall be paid to the complainant, and the other half to the town; and for any subsequent offence by imprisonment in the jail or house of correction not exceeding two years.

PROTECTION OF INFANTS.

P. S., 80, § 60.

Persons taking infant to nurse or board to give notice to board of health. Power of the board. 1876

Whoever engages in the business of taking nursing infants or infants under three years of age to board, or of entertaining or boarding more than two such infants in the same house at the same time, shall, within two days after the reception of every such infant beyond the first two, give written notice to the board of health of the city or town where such infant is so to be entertained or boarded, specifying the name and age of the child and the name and place of residence of the party so undertaking its care; and such board may enter and inspect said house and premises while said business is carried on, and direct and enforce such sanitary measures respecting such children and premises as it may deem proper.

P. S., 80, § 61.

Penalties. 1876

Whoever violates any of the provisions of the preceding section, or refuses admission to such board for said purpose, shall be punished by a fine of not less than fifty nor more than five hundred dollars. [See also 1889, chap. 309; 1891, chap. 194; 1892, chap. 318, esp. sect. 3.]

QUARANTINE.

P. S., 80, § 62.

Towns may establish a quarantine ground. 1756

A town may establish a quarantine ground in a suitable place either within or without its own limits; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained.

P. S., 80, § 63.

Two or more towns may establish a com-

Two or more towns may at their joint expense establish a quarantine ground for their common use in a suit-

mon quarantine ground.

able place either within or without their own limits; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be.

P. S., 80, § 64.

Board of health may establish the quarantine of vessels.

1699

The board of health in each seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor, and may make such quarantine regulations as it judges necessary for the health and safety of the inhabitants.

P. S., 80, § 65.

Quarantine regulations to extend to all persons, etc.

1816

Such regulations shall extend to all persons, goods, and effects arriving in such vessels, and to all persons who may visit or go on board of the same.

P. S., 80, § 66.

Penalty for violation after public notice.

1816

Whoever violates any such regulation after notice thereof has been given in the manner before provided in this chapter shall forfeit not less than five nor more than five hundred dollars.

P. S., 80, § 67.

Vessels suspected of infection to be ordered to quarantine ground.

1816

The board in each seaport town may at any time cause a vessel arriving in such port, when such vessel or the cargo thereof is in its opinion foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees, or persons in possession of the same; and may cause all persons arriving in or going on board of such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under their orders.

P. S., 80, § 68.

Penalty, if master, seamen, etc., refuse to answer on oath.

1797

A master, seaman, or passenger, belonging to a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where an infectious distemper prevails that may endanger the public health, who refuses to make answer on oath to such questions as may be asked

him relating to such infection or distemper by the board of health of the town to which such vessel may come (which oath any member of the board may administer), shall forfeit a sum not exceeding two hundred dollars; and if not able to pay said sum, he shall suffer six months' imprisonment.

P. S., 80, § 69.
Acts of 1893, 79.

All expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by the owner of such vessel.

Quarantine expenses to be paid by owner of vessel.

1816

The owner of a vessel under quarantine regulations is not liable for the expenses of a seaman at a hospital, to which he had been transferred by order of the board of health of a town, and which was under their care.

Provincetown *v.* Smith, 120 Mass. 96.

In an action of replevin of certain rags imported into a city by the plaintiff, and retained by the defendant under a claim of lien for the charges for disinfecting the rags, it is not open to the plaintiff to object that the answer, which is demurred to, does not show that the disinfection was accomplished to the satisfaction of the board of health of the city in accordance with a regulation of the board, but only shows that the defendant's process of disinfection was one satisfactory to the board, if such objection is not specifically assigned as a cause of demurrer.

In an action of replevin of certain rags imported into a city by the plaintiff, and retained by the defendant under a claim of lien for the charges for disinfecting the rags, it is not open to the plaintiff to contend that the provisions of the Pub. Stats., chap. 80, sects. 64, 67, contemplate a special exercise of the judgment of the board of health as to each cargo arriving, and not the passage of a general regulation, if the answer, which is demurred to, shows that there was a distinct order for the disinfection of the rags in question.

A regulation of the board of health of a city, passed under the authority conferred by the Statute of 1816, chap. 44, and the Pub. Stats., chap. 80, and ordering "that on and after this date all rags arriving at this port from any foreign port shall, before being discharged, be disinfected under the supervision of an officer of this board, and in a manner satisfactory to this board," even if the order was formal only, and was passed without any inquiry into the character of the rags or their special history, is not unreasonable.

A regulation of the board of health of a city, passed under authority conferred by the Statute of 1816, chap. 44, and the

Pub. Stats., chap. 80, and ordering "that on and after this date all rags arriving at this port from a foreign port shall, before being discharged, be disinfected under the supervision of an officer of this board, and in a manner satisfactory to this board," is not void as infringing the power of Congress "to regulate commerce with foreign nations."

Under the Statute of 1816, chap. 44, and the Pub. Stats., chap. 80, sects. 18, 64, 65, 67, 69, the board of health of a city may pass a regulation without a hearing, ordering rags imported into the city to be disinfected, and the expense of such disinfection to be borne by the owner of the rags; and it is not competent for the owner of the rags, as a defence to the claim for charges for disinfection, to show that the rags did not require disinfection, and could not have transmitted disease, if they were of the class concerning which the regulation was made.

Under a regulation of the board of health of a city, made in pursuance of the authority conferred by the Statutes of 1816, chap. 44, and the Pub. Stats., chap. 80, sects. 18, 64, 65, 67, 69, ordering rags imported into the city to be disinfected at the expense of the owner, the work of disinfection may be delegated by the board to a third person, who is entitled to claim a lien upon the rags for his charges.

Train *v.* Boston Disinfecting Company, 144 Mass. 523.

DOGS; HYDROPHOBIA.

P. S., 102, § 83.
Acts of 1886, 101, § 4.

Dog licenses; description of hydrophobia to be printed on them.

1877

Every license issued to the owner of a dog shall have printed thereon a description of the disease in dogs known as hydrophobia, said description to be supplied by the secretary of the state board of health to the clerks of the several cities and towns upon application therefor. [See also Pub. Stats., chap. 102, sect. 101.]

P. S., 102, § 101.

Selectmen may order dogs to be muzzled, etc.

1877

The mayor and aldermen of a city or the selectmen of a town may order that any dog or dogs within the limits of such city or town respectively shall be muzzled or restrained from running at large during such time as shall be prescribed by such order. After passing such order and posting a certified copy thereof in two or more public places in such city or town, or, in case a daily newspaper is published in such city or town, by publishing such

copy once in such newspaper, the mayor and aldermen or selectmen may issue their warrant to one or more of the police officers or constables of such city or town, who shall, after twenty-four hours from the publication of such notice, kill all dogs found unmuzzled or running at large contrary to such order.

P. S., 102, § 102.

Said police officers or constables shall be compensated for service under the preceding section as provided in section ninety. Compensation of officers. 1877

P. S., 102, § 103.

The mayor and aldermen or selectmen may cause special service of any such order to be made upon any person, requiring that a dog owned or kept by him shall be muzzled or restrained from running at large, by causing a certified copy of such order to be delivered to him; and if he refuses or neglects for twelve hours thereafter to muzzle or restrain such dog as so required, he shall be punished by fine not exceeding twenty-five dollars. Service of order. 1877 Penalty.

OFFENSIVE TRADES.

P. S., 80, § 84.

The board of health of a town shall from time to time assign certain places for the exercise of any trade or employment which is a nuisance or hurtful to the inhabitants, or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors, or is otherwise injurious to their estates, and may prohibit the exercise of such trade or employment in places not so assigned; the board may also prohibit such exercise within the limits of the town or in any particular locality thereof. All such assignments shall be entered in the records of the town, and may be revoked when the board shall think proper. Board to assign places for exercising offensive trades; and may prohibit them. 1692 1785 1855

So far as this section extends, the rules and course of proceeding under the common law are superseded, but in all other respects it continues in force as before. If the board of health acts and assigns places in which any particular trade or employment may be carried on, such an assignment would undoubtedly legalize the occupation of any person conducting his business in

that place, and he would then be liable to no process, suit or prosecution, other than those which are specially appointed and prescribed. But if no such assignment has been made, and the board, in the exercise of their discretion, have not seen fit to act at all, a remedy for injuries to the public or for violation of private rights by the permanent maintenance of offensive trades and employments must be found in the rules and principles of the common law. The statute, by leaving that body to act according to the discretion of its members, has imposed no duty upon them which they are imperatively bound to perform, and no means have been provided by a recourse to which, as by a complaint made to them, they can be compelled to exercise the power with which they are intrusted.

Commonwealth *v.* Rumford Chemical Works, 16 Gray, 231.

The board may pass an order prohibiting the exercise of an offensive trade, without having given previous notice to parties interested.

Belcher *v.* Farrar, 8 Allen, 327.

In the above case, Bigelow, C. J., says: "If, as preliminary to the exercise of any jurisdiction over the subject-matter, the selectmen were required to give notice to all persons exercising offensive trades or employments within the limits of the town, of their intention to prohibit the continuance of them, it would follow necessarily that such persons would have a right to appear and object, and ask for a hearing and trial on the question whether the use of their property was hateful or noxious, so as to fall within any of the classes contemplated by the statute. This would often lead to protracted examinations, which might occupy days or weeks. If, in the mean time, the alleged offensive and noisome trades might be carried on great injury to health might be occasioned; and it would be impossible to prevent the evils which it was the manifest object of the statute promptly to suppress."

It is questionable whether the prohibition of offensive trades is a proper subject of a by-law or ordinance, because that matter is specially provided for by statute; and to prohibit their exercise in any particular locality in a town or city by by-law or ordinance would interfere with the right of appeal to a jury which the statute secures.

Commonwealth *v.* Patch, 97 Mass. 223.

The keeping of swine cannot be considered a trade within the meaning of the law, and would be a proper subject of a by-law or ordinance.

Commonwealth *v.* Patch, 97 Mass. 223; but see 135 Mass. 526.

An order of the board under this section is not in the nature of an adjudication of a particular case, but of a general regulation of the trade or employment mentioned therein It is not to be construed with technical strictness, but with the same liberality as all votes and proceedings of municipal bodies or officers

who are not presumed to be versed in the forms of law; and every reasonable presumption is to be made in its favor. It need not state in direct terms that the trade which it prohibits is a nuisance. It is sufficient if the order clearly shows, that, in the opinion of the board, the exercise of such trade will be hurtful to the inhabitants, or injurious to the public health, or be attended by noisome and injurious odors.

Taunton *v.* Taylor, 116 Mass. 261.

A board of health of a town in 1881 made a regulation which provided that no swine should be kept in any place in a town, without a permit being first obtained from the board. On a complaint against a person for violation of this regulation, it appeared that the defendant kept about a hundred and fifty swine, and had been engaged for years in the business of feeding offal to swine. *Held*, that such a keeping of swine was an "employment," and that the authority of the board to regulate the same was under the Pub. Stats., chap. 80, sect. 84 (Gen. Stats., chap. 26, sect. 52), and not under sect. 18 (5); that the defendant was entitled to notice under sect. 87 (55); and that a publication under sect. 19 (6) was not sufficient.

Commonwealth *v.* Young, 135 Mass. 526.

The following order of a board of health was held to be a valid exercise of the power conferred upon boards of health: —

"Ordered, that the exercise of the trade or employment of preparing tripe, manufacturing neat's-foot oil, tallow and glue stock, and the boiling and trying of bones, hoofs, heads, refuse, and partially decayed animal matter, and as a part of such trade or employment, the storing about the premises where such business is carried on, of putrid meats, bones, heads, legs, and the various other materials from which offensive smells emanate, which are used in such trade or employment, be and the same hereby is forbidden within the limits of the city of Taunton."

Taunton *v.* Taylor, 116 Mass. 261.

A board of health may regulate as well as prohibit the exercise of offensive trades.

Sawyer *v.* State Board of Health, 125 Mass. 195.

The same power by this section is given to the boards of health of towns and cities as is given by sect. 93, chap. 80, Pub. Stats., to the state board of health. The only difference is this, that by sect. 93 the state board is bound to give notice to a party, and allow him a hearing before it can pass an order of prohibition; but under this section the local boards may pass an order of prohibition without any previous notice.

Sawyer *v.* State Board of Health, 125 Mass. 191.

The board of health of a town may, under the Pub. Stats., chap. 80, sect. 84, pass a qualified order forbidding the exercise of the employment of keeping swine within the town "without a permit in writing first obtained from the board of health."

Quincy *v.* Kennard, 151 Mass. 563.

P. S., 80, § 85.

Superior court on complaint may revoke such assignment.

1710
1785

When it appears on a trial before the superior court for the county, upon a complaint made by any person, that a place or building so assigned has become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or is otherwise hurtful or dangerous to the neighborhood or to travellers, the court may revoke such assignment and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented.

P. S., 80, § 86.

Action for damages from nuisance.

1799

A person injured either in his comfort or the enjoyment of his estate by such nuisance may have an action of tort for the damage sustained thereby.

P. S., 80, § 87.

Orders of prohibition, etc., to be served on occupant. If he refuses to obey, board may prevent. Penalty.

1855

Orders of prohibition shall be served upon the occupant or person having charge of the premises where such trade or employment is exercised. If the party upon whom such order is served for twenty-four hours after such service refuses or neglects to obey the same, the board shall take all necessary measures to prevent such exercise; and the person so refusing or neglecting shall forfeit not less than fifty nor more than five hundred dollars.

A notice ordered by the board and duly received is sufficiently served. It need not necessarily be served by a constable or other officer.

Winthrop *v.* Farrar, 11 Allen, 398.

The supreme judicial court has authority under its general jurisdiction as a court of equity to restrain by injunction the carrying on of an offensive trade which has been prohibited by a board of health. But the board must act in good faith towards the parties interested, and if by their action they have misled them and put them in a position to prevent their availing themselves of their right to appeal, and by reason thereof they have lost their opportunity to appeal, the court will refuse to enforce the orders of the board by a process in equity.

Winthrop *v.* Farrar, 11 Allen, 402.

A bill in equity to restrain a party from exercising an offensive trade or employment prohibited by the board of health of a city

is properly brought in the name of the city and properly signed by the mayor.

Taunton *v.* Taylor, 116 Mass. 262.

P. S., 80, § 88.
Acts of 1889, 193, § 1.

Appeal by person aggrieved.

Any person aggrieved by an order passed under section eighty-four or ninety-three of chapter eighty of the Public Statutes may appeal therefrom, and if he shall within three days from the service thereof upon him file a petition in the clerk's office of the superior court, in the county where the premises are located with reference to which such order is made, for a jury, a trial may, after such notice as the court shall order to the board, be had at the bar of the court, in the same manner as other civil cases are there tried by jury. If a person by mistake of law or fact, or by accident, fails to appeal from any such order and to file his petition for a jury within three days, and if he makes it appear to the court or justice that such failure was caused by mistake or accident, and that he has not since the service of such order upon him exercised such trade or employment contrary to the order, he may at any time within thirty days from the service of the order upon him appeal therefrom and file his petition for a jury with the same effect as if done within the said three days.

1799 1855 1859 1865

P. S., 80, § 89.
Acts of 1889, 193, § 1.

Trade not to be exercised meanwhile.

During the pendency of the appeal such trade or employment shall not be exercised contrary to the order unless specially authorized by said board after the appeal, and if so specially authorized, all further proceedings by said board shall be stayed during the pendency of the appeal; and upon any violation of the order unless specially authorized as aforesaid, the appeal shall forthwith be dismissed.

1855

The statute giving to boards of health the power to forbid the exercise, within the limits of a town or city, or in any particular locality thereof, of any trade or employment which is a nuisance or hurtful to the inhabitants or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors or is otherwise injurious to their estates, and providing for

an appeal, and that during the pendency of the appeal such trade or employment shall not be exercised contrary to the order, is within the authority of the legislature and constitutional.

Taunton *v.* Taylor, 116 Mass. 254.

The order of the board of health of a city under the Gen. Stats., chap. 26 (Pub. Stats., chap. 80), forbidding the exercise of an offensive trade in a city, is a *quasi* judicial act, and can be revised only in the manner provided in the statute; and it is not competent for the defendant in a suit in equity brought by the board of health to enjoin him from continuing an offensive trade, to prove that the trade is not a nuisance.

Taunton *v.* Taylor, 116 Mass. 254.

In Taunton *v.* Taylor, 116 Mass. 260, Gray, C. J., says: "To allow the offensive trade to be carried on until it had been decided by a jury to be a nuisance, and the question of law arising upon such a trial had been determined by the court, would defeat the purpose of the statute. It is a case in which private rights must be held subordinate to the public welfare, and falls within the strictest interpretation of the maxim, *Salus populi suprema lex.*

"The rights of any person to be affected by the order of prohibition are reasonably secured by requiring the order to be served upon him or the person in charge of his business, and by allowing him an appeal to a jury to be impanelled immediately without waiting for a regular term of court, and by whose verdict the order may be altered, annulled or affirmed."

Taunton *v.* Taylor, 116 Mass. 254, 260.

P. S., 80, § 90.
Acts of 1889, 193, § 2.

Verdict of jury may alter, etc., order; to be returned for acceptance.

1855

The verdict of the jury, which may either alter the order, or affirm or annul it in full, shall be returned to the court for acceptance as in case of highways; and said verdict when accepted shall have the authority and effect of an original order from which no appeal had been taken, and may also be enforced by injunction or other order of the court in equity.

The following order was issued by the state board of health:—

COMMONWEALTH OF MASSACHUSETTS.

STATE BOARD OF HEALTH, BOSTON, April 5, 1876.

TO GEORGE A. SAWYER *of the town of Watertown, in the county of Middlesex.*

You are hereby notified, that at a meeting of the state board of health, held at Boston, in the county of Suffolk, on the third day of April, 1876, it was ordered, on the petition of W. H. Ingraham and four others, and after a hearing of the parties, that George A. Sawyer of Watertown be, and he hereby is, directed to discontinue the business of slaughtering and rendering on the premises now occupied by him, on and after the fifteenth day of May, 1876. And it is

adjudged and determined by this board, that the premises are noxious and offensive, and that the public health and the public comfort and convenience require that the said George A. Sawyer be ordered as aforesaid, to cease and desist from carrying on the said business on the said premises, on and after the fifteenth day of May, 1876. And you are hereby directed to comply in all respects with the requirements of the said order, under penalty of what may follow thereon.

An appeal was taken to a jury of the superior court. The case was then tried in the superior court, and the jury returned the following verdict and special findings: —

The jury alter the order of the state board of health, dated April 5, 1876, as follows: That Mr. George A. Sawyer shall be permitted to continue the business of slaughtering animals on the premises now occupied by him in the town of Watertown, under the restrictions as per appended sheet.

1. Mr. George A. Sawyer shall be required to concrete the cellar under his slaughter-house, in concave form.
2. Mr. Sawyer shall not keep swine in or under his slaughter-house.
3. All offal and offensive matter shall be removed from the above premises before ten o'clock P.M. of the day of killing, in covered, water-tight boxes or tanks.
4. Said premises shall be kept at all times in a condition of neatness and cleanliness acceptable to the local board of health.

Held, that the several findings of the jury were sufficiently clear, precise, and definite in matters of form, and were proper in substance.

Sawyer *v.* State Board of Health, 125 Mass. 196.

Where an appeal is taken and trial had before a sheriff's jury, if the defendant is dissatisfied with the verdict, his remedy is, by application to the superior court, to set it aside, and, if aggrieved by any ruling of that court in matter of law, by bringing the question before the supreme court on exceptions or appeal.

Taunton *v.* Taylor, 116 Mass. 262.

Acts of 1889, 193, § 1.

Costs, how assessed. Limitations.

If the order is affirmed by the verdict, the town shall recover costs against the appellant. If it is annulled, and the appellant has not been specially authorized by said board after the appeal to exercise such trade or employment during the pendency of the appeal, he shall recover damages and costs against the town; and if he has been specially authorized as aforesaid and the order is annulled, or if it is altered, the appellant shall not recover damages against the town, and the court shall render such judgment as to costs as in its discretion may seem just.

1855

P. S., 80, § 92.
Acts of 1893, 106.

Slaughter-houses, etc., not to be used without leave.

1871
1874

Whoever occupies or uses a building for carrying on therein the business of slaughtering cattle, sheep, or other animals, or for a melting or rendering establishment, or for other noxious or offensive trades and occupations, or permits or allows said trades or occupations to be carried on upon premises owned or occupied by him, without first obtaining the written consent* and permission of the mayor and aldermen, and of the common council, if there is such a board, of the city, or selectmen of the town in which the building or premises are situated, shall forfeit a sum not exceeding two hundred dollars for every month he so occupies or uses such building or premises, and in like proportion for a longer or shorter time: *provided*, that this section shall not apply to any building or premises occupied or used for the trades or occupations before described on the eighth day of May in the year eighteen hundred and seventy-one; but no person occupying or using any building or premises on said date for the trades or occupations aforesaid shall enlarge or extend the same without first obtaining the written consent and permission of the mayor and aldermen, and of the common council, if there is such a board, or selectmen.

Penalty.

The legislature in the exercise of its police power may prohibit the use of any building in cities or towns of a certain population for carrying on, without permission of the mayor and aldermen or selectmen, a trade necessary and lawful in itself, but which in its ordinary exercise may become a public nuisance.

Watertown *v.* Mayo, 109 Mass. 318.

Where a person before the passage of the Statute of 1871, chap. 167, used and occupied a building on his own land as a slaughter-house, and therein slaughtered cattle, sheep and other animals, as a business, and after the passage of the statute he continued the business of slaughtering in said building, when the same caught fire accidentally, and was consumed, and afterwards he immediately rebuilt said slaughter-house on the same

* See Cattle Commission Statute, on a later page, requiring consent of authorities to be obtained annually in the case of certain trades. Acts of 1894, 491, § 17, as amended by Acts of 1895, 496, § 3.

site, and continued his business of slaughtering cattle, sheep and other animals therein, and it further appeared that the new building was different from the old one in its construction and arrangement, but was not larger or more extensive in size or capacity, the court held that the right to continue, without license, the same business in the building was not forfeited, and the building was within the exception stated in the section.

Watertown *v.* Sawyer, 109 Mass. 320.

The manifest purpose of the legislature is to protect the business already established, in the place where it is carried on, not the identical building which happened to be standing for its use when the law was enacted.

Watertown *v.* Sawyer, 109 Mass. 320.

A person was the owner of land and buildings used for a long period for a melting and rendering establishment and for the manufacture of soap in Somerville, a city containing more than four thousand inhabitants. In this rendering business he made use of two open kettles; but the building in which they were placed did not cover the entire lot of land. In the year 1872 he tore down a part of his buildings, which were old and dilapidated, and, without consent or permission from the mayor and aldermen of Somerville, erected a new building, standing partly on land covered by the old buildings and partly on land that had not been so covered. The new building covered about one-third as much space as the old buildings, and was two stories high with a French roof, while the old buildings were, for the most part, only one story in height. The owner's purpose was to place in that part of the new building formerly covered by the old one a covered kettle or tank for melting and rendering purposes, and to use the residue of the building for storage and other purposes connected with his business, and to tear down and discontinue the use of the old buildings and of the two open kettles. The capacity of the proposed new tank for rendering purposes would not exceed, and might not equal, that of the two open kettles. The old buildings were standing and in use, except so far as displaced by the new building.

Upon these facts the court held that it did not appear that the defendant had enlarged the premises occupied by him for the business in question, or that he had increased or proposed to increase the business, and refused to issue an injunction restraining him from so enlarging and extending them.

Somerville *v.* O'Neil, 114 Mass. 353.

P. S., 80, § 93.

State board may prohibit offensive trades.

When any building or premises are so occupied or used, the state board of health shall, upon application made to it for that purpose, appoint a time and place for hearing the parties, and give due notice thereof to the party

1871
1874

against whom the application is made, and after such notice and hearing may, if in its judgment the public health or the public comfort and convenience so require, order any person to desist and cease from further carrying on said trades or occupations in such building or premises; and any person thereafter continuing so to occupy or use such building or premises shall forfeit a sum not exceeding two hundred dollars for every month of such occupancy and use, and in like proportion for a longer or shorter time.

Penalty.

Precisely the same power is given by sect. 84, chap. 80 of the Public Statutes, to the local boards of health, as by this section is given to the state board. The only difference is this, that the state board is bound to give notice to a party, and allow him a hearing, before it can pass an order of prohibition; but the local boards may pass an order of prohibition without any previous notice.

Sawyer *v.* State Board of Health, 125 Mass. 191.

The same right to appeal to a jury from an order of the state board exists as is provided for an appeal from an order of a local board under sect. 84.

Sawyer *v.* State Board of Health, 125 Mass. 191.

P. S., 80, § 94.

Injunction to prevent offensive trades.

1871

The supreme judicial court in term time or vacation may issue an injunction to prevent the occupancy, use, enlargement, or extension of any building or premises occupied or used for the trades or occupations aforesaid, without the written consent and permission being first obtained; and also in like manner to enforce the orders of the state board issued under the preceding section.

A bill in equity to restrain by injunction a person from occupying and using a building for carrying on the business of slaughtering cattle, sheep or other animals, without the written consent of the selectmen, is properly brought in the name of the inhabitants of the town.

Watertown *v.* Mayo, 109 Mass. 315.
See also Taunton *v.* Taylor, 116 Mass. 254.

P. S., 80, § 95.

Other remedies not impaired by preceding provisions.

1874

The three preceding sections shall not be so construed as to impair any other remedies which may exist in cases of nuisance.

SWINE-SLAUGHTERING ASSOCIATIONS.

P. S., 107, § 1.

Corporations may be formed for buying and slaughtering swine, etc.

Three or more persons who associate themselves together by such an agreement in writing as is described in section sixteen of chapter one hundred and six of the Public Statutes, with a capital of not less than one hundred thousand nor more than five hundred thousand dollars, with the intention of forming a corporation for the purpose of buying and slaughtering swine and of melting and rendering and pork-packing, upon complying with the provisions of section twenty-one of said chapter shall be and remain a corporation, with all the powers, rights, and privileges, and subject to all the duties, limitations, and restrictions, contained in said chapter, except as hereinafter provided. 1874

P. S., 107, § 2.
Acts of 1886, 101, § 4.

May take land, with approval of state board of health; to file a description in registry of deeds.

Such corporation may take and hold by purchase or otherwise such parcel of land, not exceeding one hundred acres in extent, and situated in such place as the state board of health may determine to be suitable for said business; and shall, within sixty days from the time of taking any land otherwise than by purchase, cause to be signed by its president and filed in the registry of deeds for the county or district wherein said lands lie a description thereof as certain as is required in a common conveyance of lands and a statement of the purpose for which the lands are taken; but no land shall be so taken without the approval in writing of the mayor and aldermen of the city or of the selectmen of the town in which it is situated. 1874

P. S., 107, § 3.

Liability for damages. Trial by jury.

Such corporation shall be liable to pay all damages sustained by any persons in their property by the taking of any land for the purposes of this chapter. A person sustaining damages as aforesaid, and not agreeing upon the sum to be paid therefor, may apply by petition for the assessment of his damages, at any time within one year from the taking of said land, to the superior court 1874

in the county in which said land is situate; such petition may be filed in the clerk's office of said court in vacation or in term time, and the clerk shall thereupon issue a summons to the corporation, returnable, if issued in vacation, to the then next term of the said court, held fourteen days at least after the issuing of said summons, and, if in term time, returnable on such day as the court shall order, to appear and answer to the said petition; the said summons shall be served fourteen days at least before the return day thereof by leaving a copy thereof with the clerk of the corporation, and upon the return of said summons, duly served, the said petition shall stand as a cause in said court; and upon said petition all questions of fact relating to the damages sustained by the petitioner shall be heard and determined, and the amount of such damages shall be assessed by a jury, unless the parties in writing waive their right to a jury, and agree that the same shall be determined by the court; and the verdict of said jury, being accepted and recorded by the court, or the award of the court if jury trial is waived, shall be final and conclusive, and judgment shall be rendered and execution issued thereon; and costs shall be recovered by the petitioner if the amount of said judgment exceeds the amount offered him for his damage before the filing of said petition, otherwise the corporation shall recover its costs.

P. S., 107, § 4.

To build suitable buildings; regulations by state board.

1874

Such corporation shall proceed to build upon such land, suitable buildings for the slaughtering of swine and for melting and rendering, and all necessary stables and outbuildings. No such buildings shall be erected until the plans thereof, with all details of construction, have been submitted to and approved by said state board, or some person designated by it to examine them. The corporation shall carry on all its business in accordance with such regulations as said state board shall, from time to time, establish and furnish in writing to the clerk of the corporation; and for each violation of said regulations, it shall forfeit not less than twenty nor more than five hundred dollars.

Penalty.

P. S., 107, § 5.

Subject to the foregoing provisions, such corporation may manufacture and sell any of the usual products of said slaughtering and melting and rendering business, or may lease or permit other persons to use their buildings or parts thereof, on such terms as may be agreed upon. Each member of the corporation may slaughter swine on said premises, subject to such regulations and tariff of prices as the corporation may by vote at any regular meeting establish, and to the regulations of the said state board. A person engaged in business on the premises of such corporation, who violates any regulations of said state board, shall forfeit not less than twenty nor more than five hundred dollars.

Such corporation may carry on slaughtering business. Each member may slaughter on premises. **1874**

Penalty.

POLLUTION OF RIVERS AND SOURCES OF WATER AND ICE SUPPLIES.

P. S., 80, § 96.
Acts of 1896, 252, § 1.

No sewage, drainage, or refuse or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any stream or pond hereinafter referred to, for domestic use, or render it injurious to health, and no human excrement, shall be discharged into any stream or pond used as a source of water supply by a city, town or water company, or upon whose banks any filter basin so used is situated, or into any stream so used, or upon whose banks such filter basin is situated, within twenty miles above the point where such supply is taken, or into any feeders of such pond or stream within such twenty miles.

Sources of water supply not to be polluted. **1878**

Since the passage of the Statute of 1878, chap. 183, forbidding the discharge into any river or stream, used as a source of water supply by any city or town, within twenty miles above the point where such supply is taken, of any sewage, drainage, refuse or polluting matter of such quality or amount as to be deleterious to health, a person cannot acquire by prescription the right so

to foul a stream within such distance, as against a city or town using the stream as its source of water supply.

Brookline *v.* Mackintosh, 133 Mass. 215.

See also Harris *v.* Mackintosh, 133 Mass. 228.

A landlord is liable for the acts of his tenant in polluting the waters of a brook, which is a natural watercourse running through the premises, by discharging sink water therein, if the building leased is adapted and intended to be used in the manner complained of, whether he retains control over the house or not.

In an action for polluting the waters of a brook, which is a natural watercourse, if the injury to the plaintiff resulting from the defendant's acts can be specifically ascertained, it is no defence that the plaintiff has also polluted the brook.

A land owner may collect the surface water of his land, and the water drawn from wells therein, into an artificial stream, and discharge this stream into a natural watercourse running through his land, provided that this is done in the reasonable use of his land, and that the volume of water is not increased beyond the natural capacity of the watercourse to discharge it, and the land of an adjoining owner is not thereby overflowed and materially injured.

Jackman *v.* Arlington Mills, 137 Mass. 277.

Acts of 1884, 154, § 1.
Acts of 1896, 252, § 2.

Supreme or superior court may grant an injunction against a violation of P. S., ch. 80, § 96.

The supreme judicial court or superior court, in term time or vacation, upon the application of the mayor of a city, selectmen of a town or a water company interested, may grant an injunction against any violation of the provisions of section ninety-six of chapter eighty of the Public Statutes.

P. S., 80, § 97.

Certain rights not to be impaired. Prohibition not applicable to certain rivers.

1878

The preceding section [*i.e.*, Pub. Stats., chap. 80, sect. 96] shall not be construed to destroy or impair rights acquired by legislative grant prior to the first day of July in the year eighteen hundred and seventy-eight, or to destroy or impair prescriptive rights of drainage or discharge, to the extent to which they lawfully existed on that date; and nothing therein contained shall be construed to authorize the pollution of any waters in this commonwealth, in any manner contrary to law; nor shall it be applicable to the Merrimack or Connecticut rivers, or to so much of the Concord river as lies within the limits of the city of Lowell.

If a pond and the waters of a stream running into the pond are taken for the purpose of supplying a city with pure water, it is no defence to a petition in equity, under the Statutes of 1884, chap. 154, for an injunction to restrain a person from polluting the stream, that the city has, by means of a dike, prevented the waters of the stream from running into and polluting the waters of the pond.

Martin *v.* Gleason, 139 Mass. 183.

Acts of 1888, 160.

Cities and towns may unite in building sewers to protect water supply.

Any city or town having a water supply may contract with any other city or town situated in the water-shed of such supply to contribute, on such terms as may be deemed proper, to the cost of building a sewer or system of sewers which will aid in protecting any part of the source of such water supply from pollution.

P. S., 208, § 7.

Corrupting spring, etc., or injuring aqueduct. 1843

Whoever wilfully or maliciously defiles, corrupts, or makes impure any spring, or other source of water, or reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year.

P. S., 208, § 8.

Sources of domestic water-supply. 1879

Whoever wilfully deposits excrement, or foul or decaying matter, in any water used for the purpose of domestic water-supply, or upon the shore thereof within five rods of the water, shall be punished by fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days; and a police officer or constable of a city or town in which such water is wholly or partly situated, acting within the limits of his city or town, and any executive officer or agent of a water board, board of water commissioners, or water company furnishing water for domestic purposes, acting upon the premises of such board or company and not more than five rods from the water, may without a warrant arrest any person found in the act of violating the provisions of this section, and detain him until a complaint can be made against him therefor. But

this section shall not be so construed as to interfere with the sewage of a city, town, or public institution, or to prevent boating, bathing, or fishing, or the enriching of land for agricultural purposes by the owner or occupant thereof.

Acts of 1884, 172.

Bathing in water-supply prohibited. Penalty.

Whoever bathes in a pond, the water of which is used for the purpose of domestic water-supply for a city or town, shall be punished by fine not exceeding ten dollars.

P. S., 80, § 101.

Penalty for driving horse on ice of pond used for water-supply, etc.

1880

Whoever drives a horse on the ice on a pond, the water of which is used for the purpose of domestic water-supply for a city or town, shall be punished by fine not exceeding fifty dollars, or imprisonment not exceeding thirty days.

P. S., 80, § 102.

Exception to above.

The preceding section shall not apply to persons engaged in cutting or harvesting ice from such ponds, or in hauling logs, wood, or lumber.

Acts of 1886, 287, § 1.

Complaint of sale of impure ice. State board may hear parties interested.

Upon complaint in writing of not less than twenty-five consumers of ice which is cut, sold, and held for sale from any pond or stream in this Commonwealth, alleging that said ice is impure and injurious to health, the state board of health may appoint a time and place for hearing parties to be affected and give due notice thereof to such parties, and after such hearing said board may make such orders concerning the sale of said ice as in its judgment the public health requires.

Acts of 1886, 287, § 2.

Injunction may be issued by supreme court.

The supreme judicial court in term time or vacation may issue an injunction to enforce such orders of the state board.

Acts of 1886, 287, § 3.

Parties may have right of appeal to a jury.

Such orders of the state board of health shall be served upon any person or persons who are or have been selling said impure ice, and any party aggrieved thereby shall have the right of appeal to a jury and be subject to the provisions of sections eighty-eight, eighty-nine and ninety

of chapter eighty of the Public Statutes, and the court may render such judgment as to costs as in its discretion may seem just.

Acts of 1895, 338.

Inspection of ice in cities; ordinances. Penalty.

Cities may make ordinances to secure the inspection of ice sold within their limits and to prevent the sale of impure ice, and they may establish penalties for the violation of such ordinances, not exceeding twenty dollars for each offence.

Acts of 1888, 375, § 1.

State board to have supervision of inland waters. May employ engineers and clerks. Shall report its doings. Shall recommend legislation and plans.

The state board of health shall have the general oversight and care of all inland waters, and shall be furnished with maps, plans and documents suitable for this purpose, and records of all its doings in relation thereto shall be kept. It may employ such engineers and clerks and other assistants as it may deem necessary: *provided*, that no contracts or other acts which involve the payment of money from the treasury of the Commonwealth shall be made or done without an appropriation expressly made therefor by the general court. It shall annually on or before the tenth day of January report to the general court its doings in the preceding year, and at the same time submit estimates of the sums required to meet the expenses of said board in relation to the care and oversight of inland waters for the ensuing year, and it shall also recommend legislation and suitable plans for such systems of main sewers as it may deem necessary for the preservation of the public health, and for the purification and prevention of pollution of the ponds, streams, and inland waters of the Commonwealth.

1886

Acts of 1888, 375, § 2.

State board shall examine inland waters as to their quality for domestic use, recommend measures to prevent pollution, and conduct experiments. May employ experts.

Said board shall from time to time, as it may deem expedient, cause examinations of the said waters to be made for the purpose of ascertaining whether the same are adapted for use as sources of domestic water supplies or are in a condition likely to impair the interests of the public or persons lawfully using the same, or imperil the public health. It shall recommend measures for prevention of the pollution of such waters, and for removal of substances and causes of every kind which may be liable to cause pollution thereof, in order to protect and develop

the rights and property of the Commonwealth therein and to protect the public health. It shall have authority to conduct experiments to determine the best practicable methods of purification of drainage and sewage or disposal of the same. For the purposes aforesaid it may employ such expert assistance as may be necessary.

Acts of 1888, 375, § 3.

State board shall consult with the authorities of cities and towns as to introduction of water supplies and sewerage.

It shall from time to time consult with and advise the authorities of cities and towns, or with corporations, firms or individuals either already having or intending to introduce systems of water supply, drainage or sewerage, as to the most appropriate source of supply, the best practicable method of assuring the purity thereof or of disposing of their drainage or sewage, having regard to the present and prospective needs and interests of other cities, towns, corporations, firms or individuals which may be affected thereby. It shall also from time to time consult with and advise persons or corporations engaged or intending to engage in any manufacturing or other business, drainage or sewage from which may tend to cause the pollution of any inland water, as to the best practicable method of preventing such pollution by the interception, disposal or purification of such drainage or sewage: *provided*, that no person shall be compelled to bear the expense of such consultation or advice, or of experiments made for the purposes of this act. All such authorities, corporations, firms and individuals are hereby required to give notice to said board of their intentions in the premises, and to submit for its advice outlines of their proposed plans or schemes in relation to water supply and disposal of drainage and sewage, and all petitions to the legislature for authority to introduce a system of water supply, drainage or sewerage shall be accompanied by a copy of the recommendation and advice of the said board thereon. Said board shall bring to the notice of the attorney-general all instances which may come to its knowledge of omission to comply with existing laws respecting the pollution of water supplies and inland waters, and shall annually report to the legislature any specific cases not covered by the provisions of existing laws, which in its opinion call for further legislation.

shall consult with and advise corporations as to sewage disposal. Authorities and corporations to submit plans to the board.

Petitions to legislature to be accompanied with advice of board.

Board shall bring cases of neglect to notice of attorney-general, and report to legislature.

Acts of 1888, 375, § 4.

Definition of "drainage" and "sewage."

In this act the term "drainage" refers to rainfall, surface and subsoil water only, and "sewage" refers to domestic and manufacturing filth and refuse.

Acts of 1890, 441, § 1.

State board of health to have supervision of streams and ponds used as sources of water-supply.

The state board of health shall have the general supervision of all streams and ponds used by a city or town as sources of water supply, with reference to their purity, together with all springs, streams and water-courses tributary thereto; and shall have authority to examine the same from time to time and inquire what pollutions exist and what are their causes.

Acts of 1890, 441, § 2.

Complaints as to pollution.

Whenever the mayor of a city or the selectmen of a town, using a stream or pond as a source of water supply, complains to said state board of health that manure, excrement, garbage, sewage or any other matter is so deposited, kept or discharged within one hundred feet of the high water mark of any such stream or pond, or any stream, pond, spring or water-course tributary thereto, as to pollute or tend to pollute the waters of such stream, pond, spring or water-course, the said board of health shall appoint a time and place for hearing parties to be affected, and give due notice thereof to such parties; and after such hearing, if in its judgment the public health requires it, may prohibit the deposit, keeping or discharge of any such material as aforesaid, and may order any person to desist therefrom and to remove any such material theretofore deposited; but shall not prohibit the use of any structure as was customary at the time of the passage of this act, unless the mayor of the city or the selectmen of the town making the complaint shall file with said state board of health an agreement in writing that such city or town shall at its own expense make such changes in said structure or its location as said board shall deem expedient, and such agreement shall be binding on such city or town; and when such changes have been made all damages occasioned thereby shall be paid by such city or town; and if the parties

Hearing to be held.

Board may prohibit pollution.

Prohibition limited.

Damages to be paid by city or town.

Damages may be determined by jury.

cannot agree thereon, such damages shall be determined by a jury on petition of either party filed in the clerk's office of the superior court, in the manner provided by law in relation to determining the damages occasioned by taking land for highways in such city or town; said board shall not prohibit the cultivation and use of the soil in the ordinary methods of husbandry, provided no human excrement be used thereon.

Cultivation and use of soil allowed.

Acts of 1890, 441, § 3.

Appeals, how made.

Any person aggrieved by an order passed under this act may appeal therefrom; and if he shall, within ten days from the service of such order upon him, file a petition in the clerk's office of the superior court in the county where the premises are located, with reference to which such order is made, for a jury, a trial may, after such notice as the court shall order to the said board of health and the mayor of the city or the chairman of the selectmen of a town interested in such order, be had at the bar of the court in the same manner as other civil cases are tried by jury. If a person by mistake of law or fact or by accident fails to appeal from any such order and to file his petition for a jury within ten days, and if he makes it appear to the court or justice that such failure was caused by mistake or accident and that he has not since the service of such order upon him violated such order, he may at any time within thirty days from the service of the order upon him appeal therefrom and file his petition for a jury with the same effect as if done within the said ten days. During the pendency of the appeal the order of the said board of health shall be complied with unless otherwise authorized by said board after the appeal. The verdict of the jury, which may either alter the order or affirm or annul it in full, when accepted by the court shall have the authority and effect of and may be enforced in the same way as an original order from which no appeal had been taken.

Failure to appeal.

Orders to be complied with during pendency of appeal.

Authority of verdict.

Acts of 1890, 441, § 4.

Court may enforce orders of board.

Any court having equity jurisdiction may, in term time or vacation, on the application of said state board of health or of any party interested, by any suitable process

or decree in equity, enforce by injunction or otherwise such orders of said board of health or of said court; and may at the same time issue an injunction to restrain, until the orders of said board have been complied with, the use or occupation of the premises within said distance of one hundred feet on which the said material is deposited or kept.

Court may restrain by injunction.

Acts of 1890, 441, § 5.

Whoever deposits, keeps or discharges on his premises any material in violation of such order of prohibition, after the same has been served upon him as aforesaid, shall forfeit a sum not exceeding ten dollars for each and every day until such order is complied with.

Penalty for violation.

Acts of 1890, 441, § 6.

This act shall not be construed to impair or repeal any existing provision of law in regard to the pollution of springs, streams, ponds or water-courses, or the prevention of such pollution, or the powers and jurisdiction of any court relating to the prevention of such pollution; nor shall it be applicable to the Merrimac or Connecticut rivers, nor to so much of the Concord river as lies within the limits of the city of Lowell.

Act not to impair or repeal existing provisions.

Certain rivers excepted.

Acts of 1890, 441, § 7.

All hearings granted in accordance with the provisions of this act shall be held in the city or town in which the nuisance or pollution is alleged to exist.

Hearings to be held in city or town where pollution is alleged to exist.

DRAINS AND COMMON SEWERS.

P. S., 50, § 1.
Acts of 1890, 124.

The mayor and aldermen of a city, and the selectmen or road commissioners of a town, may lay, make, and maintain all such main drains or common sewers, as they adjudge to be necessary for the public convenience or the public health, through the lands of any persons or corporations, and may repair the same whenever it is necessary; main drains and common sewers so laid shall be the property of the city or town. Cities and towns may with the approval of the state board of health, ob-

Authorities of cities and towns may make sewerage systems, etc.

tained after a public hearing by said board of all parties interested, purchase or take land within their respective limits for the purification and disposal of sewage. Said board shall give notice of such hearings by publication in such newspapers and at such times as it may deem proper.

PUBLIC BATHS.

P. S., 27, § 13.

Towns may establish and maintain public baths, etc.

A town in which chapter two hundred and fourteen of the statutes of the year eighteen hundred and seventy-four has been duly accepted, or in which this and the following section have been accepted by two thirds of the legal voters present and voting at an annual meeting, may purchase or lease lands, and erect, alter, enlarge, repair and improve buildings for public baths and wash-houses, either with or without open drying grounds, and may make open bathing places, and may fit up and furnish all of the same with the requisite furniture, fittings, and conveniences, and may raise and appropriate money therefor.

P. S., 27, § 14.

Towns may appoint officers and make regulations for baths, etc.

Such town may establish rates for the use of such baths and wash-houses, and appoint officers therefor, and may make by-laws for the government of such officers, and authorize them to make such rules and regulations as may seem to them expedient for the management of such baths and wash-houses; but such by-laws, rules, or regulations shall be subject to alteration or repeal at any time.

CEMETERIES, BURIALS, AND REMOVAL OR TRANSPORTATION OF BODIES.

Acts of 1885, 302, § 1.

Lots to be indivisible, but inheritable. Representatives of, how designated.

Lots in such cemeteries shall be held indivisible, and upon the decease of a proprietor of such lot the title thereto shall descend to his heirs at law or devisees, subject however to the following limitations and conditions: If he leaves a widow and children, they shall have in

common the possession, care and control of said lot during her life. If he leaves a widow and no children, she shall have the possession, care and control of such lot during her life. If he leaves children and no widow, they or the survivor of them shall in common have the possession, care and control of such lot during the life of the survivor of them. The parties having such possession, care and control of such lot during the term thereof, may erect a monument and make other permanent improvements thereon. The widow shall have a right of interment for her own body in such lot or in a tomb in such lot, and a right to have her body remain permanently interred or entombed therein, except that her body may be removed therefrom to some other family lot or tomb with the consent of her heirs. At any time when more than one person is entitled to the possession, care and control of such lot, the persons so entitled thereto shall designate in writing to the clerk of the corporation which of their number shall represent the lot, and on their failure so to designate, the board of trustees or directors of the corporation shall enter of record which of said parties shall represent the lot, while such failure continues. The widow may at any time release her right in such lot, but no conveyance or devise by any other person shall deprive her of such right.

P. S., 82, § 4.

Provisions of preceding section to apply to tombs in public cemeteries in cities, etc.

The preceding section shall apply to all tombs in public cemeteries in cities, and the boards of health in cities shall exercise, in regard to such tombs, the powers granted by said section to trustees or directors of cemetery corporations.

1877

Acts of 1892, 165, § 1.

Powers of boards of health relative to public cemeteries in towns.

The provisions of chapter three hundred and two of the acts of the year eighteen hundred and eighty-five, relative to lots in cemeteries, shall apply to all lots and tombs in public cemeteries in towns, and the boards of health in towns shall exercise, in regard to such lots and tombs, the powers granted by said chapter to trustees or directors of cemetery corporations, and the designation in writing shall be given to the town clerk.

1885, 302.

Acts of 1892, 165, § 2.

Notice to be given of hearings. P. S., 82, § 20.

The board of health, before exercising the power granted by this act with respect to a lot or tomb, shall give notice of a hearing in the manner provided in section twenty of chapter eighty-two of the Public Statutes, and shall hear any of the parties entitled to the control of such lot or tomb, who may appear at the time and place notified, before deciding who shall represent said lot or tomb.

P. S., 82, § 18.

Private land not to be used for burial, except, etc.

Except in the case of the erection or use of a tomb on private land, for the exclusive use of the family of the owner, no land other than that already so used or appropriated shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same is situated.

See Meagher *v.* Driscoll, 99 Mass. 281.
Woodlawn Cemetery *v.* Everett, 118 Mass. 354.

P. S., 82, § 19.
Acts of 1885, 278, § 1.

Boards of health may make regulations.

Boards of health of cities and towns may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial; may, if in their opinion the public health requires it, close any tomb, burial ground, cemetery or other place of burial within the city or town, for such length of time as they may deem necessary for the protection of the public health; may make all regulations which they judge necessary concerning burial grounds and interments within their respective limits, and may establish penalties not exceeding one hundred dollars for any breach of such regulations.

1816

The powers given to boards of health are large and general to make regulations for the interment of the dead and respecting burying-grounds.

Withington *v.* Harvard, 8 Cush. 68.

This section is not confined in its operation to acts done within the burial grounds. The word "interments" properly includes and describes the removal of the bodies of deceased persons for the purpose of burial.

That this necessary duty shall be performed, especially when undertaken for hire, by suitable and trustworthy persons, and that the moving of dead bodies through the public streets shall be conducted with decency and safety, are obviously matters proper for municipal regulation, and which, as well as the mode of burial, may concern the public health to no slight extent.

Commonwealth *v.* Goodrich, 13 Allen, 546.

cf. Austin *v.* Murray, 16 Pick. 121.

Commonwealth *v.* Parks, 155 Mass. 531, 533.

The board of health of a city may establish a regulation prohibiting any person, unless appointed an undertaker or otherwise authorized by the board of health, from moving from any house or other place in the city to any place of burial the body of any deceased person, and making it the duty of undertakers to attend funerals when required, and to collect and pay over the burial fees, and requiring, further, each undertaker to give bonds in the sum of two hundred dollars for the faithful performance of his duties.

The refusal or neglect of a person appointed an undertaker to give the bond required by the regulation would justify the revocation of his appointment without any previous notice to him.

Commonwealth *v.* Goodrich, 13 Allen, 546.

P. S., 82, § 20.

Boards of health to give notice of regulations.

Notice of such regulations shall be given by publishing the same in some newspaper of the city or town or, if there is no such newspaper, by posting a copy in some public place therein; which shall be deemed legal notice to all persons. **1816**

P. S., 80, § 21.

Penalty for interments in violation of section eighteen.

For every interment in violation of section eighteen, chapter eighty-two of the Public Statutes, in a city or town in which the notice prescribed in the preceding section has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars. **1855**

P. S., 82, § 22.

Notice to be given before closing tombs, etc., by order of board.

Before a tomb, burial-ground, or cemetery is closed by order of such board of health for a time longer than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if so many there are, of the proprietors of such burial-ground or cemetery, and notice **1855**

shall also be published two successive weeks at least preceding such hearing, in two newspapers, if so many there are, published in the county.

P. S., 82, § 23.

Appeal from order of board.

1855
1859

The owner of a tomb aggrieved by the order of the board of health closing a tomb, burial-ground, or cemetery, may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to the entry thereof. But the order of the board shall remain in force until a decision is had on the appeal.

P. S., 82, § 24.
Acts of 1885, 278, § 2.

To be tried by jury. Costs.

Appeals shall be tried in regular course before a jury, and if a jury find that the tomb, burial-ground or cemetery so closed was not a nuisance nor injurious to the public health at the time of the order, and that the closing thereof was not necessary for the protection of the public health, the court shall rescind such order so far as it affects such tomb, burial-ground or cemetery; and execution for the costs of the appeal shall issue in favor of the appellant, against the city or town in which the same was situated. But if the order is sustained execution shall issue for double costs against the appellant in favor of the board of health for the use of the city or town.

P. S., 32, § 5.
Acts of 1883, 124.
Acts of 1888, 306, § 2.
Acts of 1893, 263, § 2.

Permit for burial or removal of a human body to be procured, etc.

No undertaker, sexton or other person shall bury in a city or town or remove therefrom a human body until he has received a permit so to do from the board of health or its duly appointed agent, or, if there is no board of health in such city or town, from the city or town clerk. No such permit shall be issued until there has been delivered to such board, or agent or clerk, as the case may be, a satisfactory written statement containing the facts re-

quired by this chapter to be returned and recorded, together with the certificate of the attending physician, if any, as required by section three of this chapter, or in lieu thereof a certificate as hereinafter provided. If there is no attending physician, or if the certificate of the attending physician cannot be obtained, for good and sufficient reasons, early enough for the purpose, the chairman of the board of health or any physician employed by a city or town for the purpose shall, upon request of said board, agent or clerk, make such certificate as is required of the attending physician; and in case of death by violence the medical examiner shall, if requested, make the same. When such satisfactory statement and certificate are delivered to the board of health or to its agent, the board or agent shall forthwith countersign and transmit the same to the clerk or registrar for registration. The person to whom the permit is so given shall thereafter furnish for registration any other information as to the deceased or to the manner and cause of the death, as the clerk or registrar may require. Any person violating any of the provisions of this section shall be punished by a fine not exceeding fifty dollars.

Penalty.

Acts of 1883, 124, § 2.
Acts of 1887, 335.

Transportation of bodies of persons who have died of infectious disease. Such bodies to be so prepared as to preclude danger.

No railroad corporation, or other common carrier or person, shall convey or cause to be conveyed, through or from any city or town in this Commonwealth, the remains of any person who has died of small-pox, scarlet-fever, diphtheria, or typhoid fever, until such body has been so encased and prepared as to preclude any danger of communicating the disease to others by its transportation; and no local registrar or clerk shall give a permit for the removal of such body until he has received from the board of health of the city, or the selectmen of the town where the death occurred, a certificate stating the cause of death, and that said body has been prepared in the manner set forth in this section, which certificate shall be delivered to the agent or person who receives the body. Any person violating the provisions of this section shall be punished by fine, not exceeding twenty-five dollars.

Penalty.

P. S., 32, § 6.

Undertakers to be licensed by board of health.

1872

The boards of health of towns and the mayor and aldermen of cities shall, on or before the first day of July in each year, license a suitable number of undertakers to take charge of the funeral rights preliminary to the interment of a human body.

P. S., 207, § 47.

Violation of sepulture.

1830

Whoever, not being authorized by the board of health, overseers of the poor, directors of a workhouse, or mayor and aldermen or selectmen of a city or town, or by the board of directors for public institutions or overseers of the poor of the city of Boston, wilfully digs up, disinters, removes, or conveys away a human body or the remains thereof, or knowingly aids in such disinterment, removal, or conveying away, and whoever is accessory thereto either before or after the fact, shall be punished by imprisonment in the state prison or jail not exceeding three years or by fine not exceeding two thousand dollars.

Penalty.

The common law, in relation to the offence of disinterring a dead body, is superseded by Statute of 1814, chap. 175, so that an indictment for this offence must conclude *contra formam statuti.*

Commonwealth *v.* Cooley, 10 Pick. 37.

The removal of a dead body is not an offence within the meaning of Statute of 1830, chap. 57 (Pub. Stats., chap. 130, sect. 19), unless it is removed with the intent to use it or dispose of it for the purpose of dissection; wherefore, in an indictment on that statute, such an intent should be averred.

Commonwealth *v.* Slack, 19 Pick. 304.

P. S., 207, § 48.

Buying, selling, or having dead body for purpose of sale, etc. Penalty.

Whoever buys, sells, or has in his possession for the purpose of buying, selling, or trafficking in the dead body of a human being, shall be punished by fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the jail for not less than three months nor more than three years.

P. S., 207, § 49.

Injuring or defacing tomb, memorial of dead, etc.

Whoever wilfully destroys, mutilates, defaces, injures, or removes a tomb, monument, gravestone, or other structure or thing placed or designed for a memorial of

the dead, or a fence, railing, curb, or other thing intended for the protection or ornament of a tomb, monument, gravestone, or other structure before mentioned, or of an enclosure for the burial of the dead, or wilfully destroys, mutilates, removes, cuts, breaks, or injures a tree, shrub, or plant placed or being within such enclosure, or wantonly or maliciously disturbs the contents of a tomb or grave, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail or house of correction not exceeding three years. Penalty.

An ancient burial ground, which for sixty years has been separated by a fence from the adjoining land, and used occasionally for burials until the present time, may be described as a public burial ground in an indictment for destroying trees in a place of burial, under Gen. Stats., chap. 28, sect. 12, although it can only be reached by a way, which has always been used for the purpose, over an adjoining private estate, of which it was originally a part, and the owners of which built and have maintained the fence for their own convenience, and have depastured the burial ground, cut the trees upon it and cultivated parts of it at their pleasure, under a claim of right, and no one else has exercised or claimed any control over the same until the town in which it lies assumed the charge thereof within three years.

Cutting trees upon a public burial ground for purposes of private profit, without consent of the public authorities having charge of it, is a violation of the Gen. Stats., chap. 28, sect. 12, which provides a penalty for destroying trees within the limits of a place of burial, although the person who cuts them is the owner of the fee of the land, and honestly believes that his acts are lawful.

Commonwealth *v.* Viall, 2 Allen, 512.

If an indictment for wrongfully desecrating and disfiguring a public burying ground contains an accurate description of it by metes and bounds, the proof must correspond with the averment; and it is not sufficient to prove that a part of the lot described was a public burying ground, although the acts complained of were committed upon that part.

A place may be shown to be a public burying ground, in the trial of an indictment for wrongfully desecrating and disfiguring it, by evidence of use and occupation for the purposes of burial by others than the owners of the soil, and as of right; and if it has once acquired that character, it will not cease to have it by mere disuse.

It is no defence to an indictment for wrongfully desecrating and disfiguring a public burying ground to show that the defendant was the owner of the fee of small lots within it, under titles

derived from various grantees to whom they had been conveyed, "to be used for burial ground;" and evidence to show such ownership is inadmissible.

Commonwealth *v.* Wellington, 7 Allen, 299.

A land owner may lawfully build on his land, without regard to the effect of the structure in excluding surface water which otherwise would flow from lands adjoining, and it is immaterial that the adjoining land is a burial ground.

The erection of a structure on land of the builder to exclude surface water which otherwise would flow from an adjoining burial ground is not a violation of the provisions of the Gen. Stats., chap. 28, sect. 12, and chap. 165, sect. 39, for the protection of places of burial from injury or desecration.

Bates *v.* Smith, 100 Mass. 181.

P. S., 207, § 50.

Desecration of burial ground.

Whoever wrongfully, and by any act not included in the provisions of the preceding section, destroys, injures, or removes a building, fence, railing, or other thing lawfully erected in or around a place of burial or cemetery, or a tree, shrub, or plant situate within its limits, or wrongfully injures a walk or path, or places rubbish or offensive matter or commits a nuisance therein, or in any way desecrates or disfigures the same, shall forfeit for every such offence not less than five nor more than one hundred dollars. Upon the trial of a prosecution for the recovery of such penalty, use and occupation for the purposes of burial shall be deemed sufficient evidence of title.

Penalty.

Acts of 1888, 395, § 1.

Penalty for removing flowers, flags or other memorial tokens from graves.

Whoever, without authority, removes any flowers, flags or memorial tokens from any grave, tomb, monument or burial lot in any cemetery, or other place of burial shall be punished by fine not exceeding one hundred dollars for each offence.

OF THE PROMOTION OF ANATOMICAL SCIENCE.

P. S., 81, § 1.
Acts of 1891, 185, § 1.

Physicians and medical schools may take dead bodies in certain cases.

The overseers of the poor of a city or town, the trustees and superintendent of the state almshouse and the state workhouse, and the commissioners of public institutions in the city of Boston, may to any physician or sur-

geon, upon his request, give permission to take the bodies of such persons dying in such town, city, almshouse, workhouse, or public institution of the city of Boston, as are required to be buried at the public expense, to be by him used within the state for the advancement of anatomical science; preference being given to medical schools established by law, for their use in the instruction of students.

Acts of 1891, 406, § 1.

Amendment to Acts of 1891, 185, § 1.

The name state workhouse, which is used in section one of chapter one hundred and eighty-five of the acts of the year eighteen hundred and ninety-one, being "an act relating to the promotion of anatomical science," shall be held to apply to the state farm at Bridgewater, and the trustees and superintendent of the state farm at Bridgewater may exercise the powers given by said section.

P. S., 81, § 2.

Physicians to give bond on receiving body.

Every physician or surgeon, before receiving any such dead body, shall give to the board of officers surrendering the same to him a sufficient bond that each body shall be used only for the promotion of anatomical science within this state, and so as in no event to outrage the public feeling; and that, after having been so used, the remains thereof shall be decently buried.

P. S., 81, § 4.
Acts of 1891, 185, § 2.

Request of deceased person to be respected.

If the deceased person, during his last sickness, of his own accord requested to be buried, or if, within three days after his death, any person claiming to be and satisfying the proper authorities that he is a friend or of kindred to the deceased asks to have his body buried, or if such deceased person was a stranger or traveller who suddenly died, the body shall not be so surrendered, but shall be buried.

CREMATION.

Acts of 1885, 265, § 1.

Five or more persons may form a corporation for purpose of incinerating dead bodies.

Any five or more persons may associate themselves together in the manner prescribed by chapter one hundred and six of the Public Statutes, with a capital of not

less than six thousand nor more than fifty thousand dollars, for the purpose of providing the necessary appliances and facilities for the proper disposal by incineration of the bodies of the dead; and corporations so established shall have the same powers and privileges and be subject to the same duties, liabilities and restrictions as other corporations established under said chapter, except as hereinafter provided. The par value of shares in the capital stock of corporations organized under the provisions of this act shall be either ten or fifty dollars.

Acts of 1885, 265, § 2.
Acts of 1886, 101, § 4.

May hold real estate as approved by state board of health.

Every such corporation may acquire by gift, devise or purchase, and hold in fee simple so much real estate not exceeding in value fifty thousand dollars as may be necessary for carrying out the objects connected with and appropriate to the purposes of said corporation, and situated in such place as the state board of health may determine to be suitable for said objects and purposes. No building shall be erected, occupied or used by such corporation until the location and plans thereof, with all details of construction, have been submitted to and approved by said board or some person designated by it to examine them.

Acts of 1885, 265, § 3.

May make by-laws and rules subject to the approval of state board.

Every such corporation may make by-laws and regulations consistent with law and subject to the approval of said state board, for the reception and cremation of bodies of deceased persons, and for the disposition of the ashes remaining therefrom, and shall carry on all its business in accordance with such regulations as said board shall from time to time establish and furnish in writing to the clerk of the corporation, and for each violation of said regulations, it shall forfeit not less than twenty nor more than five hundred dollars.

Acts of 1885, 265, § 4.

No body to be cremated within 48 hours after death.

No body of a deceased person shall be cremated within forty-eight hours after decease, unless death was occasioned by contagious or infectious disease; and no body

shall be received or cremated by said corporation until its officers have received the certificate or burial permit required by law before burial, together with a certificate from the medical examiner of the district within which the death occurred, that he has viewed the body and made personal inquiry into the cause and manner of death, and is of opinion that no further examination nor judicial inquiry concerning the same is necessary. For such view, inquiry and certificate he shall receive the fees prescribed by section nine of chapter twenty-six of the Public Statutes for a view without an autopsy by examiners in counties other than Suffolk County. Medical examiners within their respective districts shall make such view and inquiry upon application therefor and payment or tender of said fees.

Certificate of medical examiner required in addition to usual certificate. Fees of medical examiner.

CONTAGIOUS DISEASES AMONG CATTLE.*

P. S., 90, § 12.
Acts of 1885, 378.

The governor, with the advice and consent of the council, shall appoint a board of cattle commissioners of not more than three members, whose term of office shall commence on the first day of October, eighteen hundred and eighty-five, and who shall hold office as follows: — One of said members for the term of three years, one for the term of two years, one for the term of one year, and thereafter one of said members shall be appointed annually for the term of three years. The compensation of such commissioners shall not exceed five dollars per day for actual service, in addition to their travelling expenses necessarily incurred. Any member of the board may be removed by the governor and council, and they may terminate the commissions of the entire board when in their judgment the public safety may permit. Vacancies in the board by the expirations of the terms of service or otherwise shall from time to time be filled by appointment by the governor with the consent of the council.

Cattle commissioners to be appointed. Term of office. Compensation. Removals. Vacancies. Duties.

Note. — It is not deemed necessary to quote the Act of 1884, chap. 232, since that statute, although it has never been repealed, is practically rendered null and void, no appropriation having been made for its execution since the first year of enactment.

Acts of 1887, 250, § 1.

Governor authorized to accept United States rules and regulations. Sheriffs and others to assist inspectors.

The governor is hereby authorized to accept on behalf of the state the rules and regulations prepared by the commissioner of agriculture, under and in pursuance of section three of an act of congress approved on the twenty-ninth day of May, in the year eighteen hundred and eighty-four, entitled "an act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and to cooperate with the authorities of the United States in the enforcement of the provisions of said act.

Acts of 1887, 250, § 2.

Inspectors to have same powers and protection as peace officers.

The inspectors of the bureau of animal industry of the United States shall have the right of inspection, quarantine and condemnation of animals affected with any contagious, infectious or communicable disease, or suspected to be so affected, or that have been exposed to any such disease, and for these purposes are hereby authorized and empowered to enter upon any ground or premises. Said inspectors shall have the power to call on sheriffs, constables and peace officers to assist them in the discharge of their duties in carrying out the provisions of the act of congress approved on the twenty-ninth day of May in the year eighteen hundred and eighty-four, establishing the bureau of animal industry; and it is hereby made the duty of sheriffs, constables and peace officers to assist said inspectors when so requested; and said inspectors shall have the same powers and protection as peace officers while engaged in the discharge of their duties.

Acts of 1887, 250, § 3.

Expenses to be paid by United States.

All expenses of quarantine, condemnation of animals exposed to disease and the expenses of any and all measures that may be used to suppress and extirpate pleuro-pneumonia shall be paid by the United States, and in no case shall this state be liable for any damages or expenses of any kind under the provisions of this act.

Acts of 1894, 491, § 1.

Inspectors of animals, etc.; appointment, oath, etc.

The mayor and aldermen of cities and the selectmen of towns shall, within thirty days after the passage of this act, and thereafter annually in the month of March, appoint one or more persons to be inspectors of animals and provisions. Each inspector shall be sworn faithfully to discharge the duties of his office, and shall receive a reasonable compensation, to be paid by the city or town for which he has been appointed. Such town and city officers shall have the power to remove any person so appointed by them to be an inspector, and in such case shall immediately appoint another in his place. Every city and town shall, within thirty days after the passage of this act, and thereafter before the first day of April in each year, send to the board of cattle commissioners a true and correct list of the duly appointed and qualified inspectors of animals and provisions appointed under this section, which notice shall give the name and address of each such inspector and his usual business occupation, as far as the same is known.

List to be sent to cattle commissioners.

Acts of 1894, 491, § 2.

Cities and towns liable for neglect of officers.

Whenever the officers of a city or town refuse or neglect to carry into effect the provisions of section one, such city or town shall be liable to forfeit a sum not exceeding five hundred dollars for each such refusal or neglect, and the board of cattle commissioners shall have the power to appoint one or more persons to be such inspector or inspectors for such city or town. Such board shall also have the power to remove any inspector of provisions and animals appointed under the provisions of this act, whenever, in the opinion of said board, such inspector neglects or refuses to be sworn or properly perform the duties of his office, and in such case shall appoint another inspector to serve for the balance of his term. Every inspector of provisions and animals appointed by said board shall be sworn faithfully to discharge the duties of his office and shall receive such compensation, not exceeding the sum of five hundred dollars a year each, as said board shall determine. Such compensation shall be paid by the city or town for which he or they have been appointed.

Compensation of inspectors.

Acts of 1895, 476, § 1.

Compensation. How paid.

One half of the compensation of inspectors of animals and provisions appointed under sections one and two of chapter four hundred and ninety-one of the acts of the year eighteen hundred and ninety-four, in cities and towns of less than two and one half million dollars valuation, shall hereafter be paid from the treasury of the Commonwealth: *provided, however*, that no inspector shall receive from the Commonwealth more than two hundred and fifty dollars as compensation in any one year.

Acts of 1894, 491, § 3.

To enforce regulations.

Every inspector appointed under the provisions of this act shall carry out and enforce all regulations and orders to him directed by the board of health under the provisions of this act, or by the board of cattle commissioners or any of its members, in the discharge of his or their duties.

Acts of 1894, 491, § 4.
Acts of 1895, 496, § 1.

To inspect domestic animals.

Said inspectors shall make regular and thorough inspections of all neat cattle, sheep and swine found within the limits of their several cities and towns. Such inspections shall be made at such times and in such manner as the board of cattle commissioners shall from time to time determine and direct. They shall also make, from time to time, inspections of all other domestic animals within the limits of their several cities and towns, whenever they have knowledge or reason to suspect that such animals are affected with or have been exposed to any contagious disease, and they shall immediately inspect any and all domestic animals and any barn, stable, or premises where any such animals are kept, whenever directed so to do by the board of cattle commissioners or any of its members: *provided*, nothing in this act shall apply to the inspection of sheep or swine slaughtered in wholesale slaughtering establishments, or to the obtaining of a license for the slaughtering of such sheep or swine.

Acts of 1894, 491, § 5.

To keep records and make returns.

Every inspector shall keep a record of all inspections made by him and his doings thereon, and shall make regular returns of all such inspections to the board of cattle commissioners. Such records and returns shall be made in such form and at such times as the board of cattle commissioners shall determine and direct, and said board and the board of health of the city or town for which said inspector is appointed shall have at all times the right to inspect said records and make copies thereof.

Acts of 1894, 491, § 6.
Acts of 1895, 496, § 2.

Certificate of freedom from infectious disease.

Whenever an inspector is satisfied, upon an examination of any neat cattle, sheep or swine, that such animals are free from contagious disease, he shall deliver to the owner or to the person in charge thereof, a written certificate of their wholesome condition, signed by him, which certificate shall be in such form as the board of cattle commissioners shall prescribe, and shall cause a copy of said certificate to be entered upon his records.

Acts of 1894, 491, § 7.

Certain animals to be quarantined.

When any inspector, upon an examination of any domestic animal, suspects or has reason to believe that such animal is affected with a contagious disease, and whenever any inspector is directed so to do by the board of cattle commissioners or any of its members, or by the board of health of the city or town for which he has been appointed, he shall immediately cause said animal to be quarantined or isolated upon the premises of the owner or of the person in whose charge it is found, or in such other place or enclosure as may be designated by either of such boards or any such commissioner, and shall take such other sanitary measures to prevent the spread of such disease as may be necessary or as shall be prescribed in such order or by any order or regulation issued by the board of cattle commissioners. Such inspector shall also deliver to the owner or person in charge of such animal, or to any person having an interest therein, a written notice or order

of quarantine signed by him, which notice or order shall be in such form as the board of cattle commissioners shall prescribe, and he shall cause a copy of said notice to be entered upon his records.

Acts of 1894, 491, § 8.

Notice or order of quarantine, how served.

Such notice or order may be served by an officer authorized to serve civil process, or the same may be delivered by the inspector to the owner or person having such interest therein, or to the person in charge of such animal, or may be left at the last and usual place of abode of such owner or person, or may be posted upon the premises where said animal is quarantined or isolated, and a copy of said notice or order of quarantine, with the return of said officer or inspector thereon that such service has been made, shall be competent evidence in any court that such quarantine has been imposed. Whenever any animal has been quarantined by an inspector under the provisions of this act such animal shall remain in quarantine until the further order of the board of health of the city or town wherein said animal is confined, or of the board of cattle commissioners or any of its members.

Acts of 1894, 491, § 9.

Notice to be given to board of health and cattle commissioners.

Whenever any inspector has caused any domestic animal to be quarantined, as provided in section eight, he shall immediately give a written notice thereof to the board of health of the city or town where said animal is quarantined, and shall also immediately send a written notice, together with a copy of the order of quarantine, to the board of cattle commissioners, and shall give such information to no other person.

Acts of 1894, 491, § 10.

Inspection of meat, provisions, etc.

Said inspectors may inspect the carcass of all slaughtered animals, and all meats, fish, vegetables, produce, fruits or provisions of all kinds found in said cities or towns, and shall make such inspections thereof as may be ordered by the board of health for the city or town for which they have been appointed. Whenever the carcass of any such animal is, in the opinion of such inspector,

To be seized and destroyed when found unwholesome.

diseased or unfit for food, or when such meat, fish, vegetables, produce, fruit or provisions are found, on such inspection, to be tainted, diseased, corrupted, decayed or unwholesome, from any cause, such inspector shall seize the same and cause it or them to be destroyed forthwith, or disposed of otherwise than for food; but if at the time of such seizure the owner of the property so seized notifies in writing the inspector seizing the same that he desires to appeal to the board of health of such city or town, such inspector shall retain the possession of such carcass, meat, fish, vegetables, produce, fruit or provisions so seized, and shall immediately notify such board of health of such appeal, and it shall thereupon be the duty of such board of health or a committee thereof, consisting of not less than two members, to hear the parties or inspect such seized carcass, meat, fish, vegetables, produce, fruit or provisions, and if, in the opinion of said board or said committee, the same is tainted, diseased, corrupted, decayed or unwholesome, they shall order the same to be destroyed forthwith, or to be disposed of otherwise than for food. If said board or committee do not so find they shall order said carcass, meat, fish, vegetables, produce, fruit or provisions to be forthwith returned to the owner thereof. All moneys received by said inspectors or board of health for property disposed of as aforesaid shall, after deducting all expenses incurred by reason of said seizure, be paid to the owner of such property.

Portion of money to be paid to owner.

Acts of 1894, 491, § 11.

Whenever such inspector seizes or condemns any such carcass or meat by reason of the presence of, or of its being affected with, any contagious disease, he shall immediately notify the board of cattle commissioners, giving the name of the owner or person in whose possession the said meat or carcass was found, the nature of the disease and the disposition made of said meat or carcass.

Cattle commissioners to be notified of seizures.

Acts of 1894, 491, § 12.

Said inspectors may inspect all veal found in said city or town or offered or exposed for sale or kept with the intent to sell therein, and shall make such inspection whenever

Inspection of veal, etc.

ordered so to do by the board of health of such city or town, and if said veal is, in the opinion of said inspector, that of a calf killed under four weeks old, he shall seize the same and cause it to be destroyed or disposed of as provided in the preceding section, subject however to the provisions therein contained concerning appeal and the disposal of moneys.

P: S., 208, § 2.

Killing for sale, or selling calf less than four weeks old.

1866

Whoever kills or causes to be killed, for the purpose of sale, any calf less than four weeks old, or knowingly sells, or has in his possession with intent to sell, the meat of any calf killed when less than four weeks old, shall be punished by imprisonment in the jail or house of correction not exceeding six months, or by fine not exceeding two hundred dollars, or by both such imprisonment and fine; and all such meat exposed for sale, or kept with intent to make sale thereof, may be seized and destroyed by any board of health or health officer, or by any sheriff, deputy sheriff, constable or police officer.

Where a party is charged with an offence of "killing, or causing to be killed, for the purpose of sale, any calf less than four weeks old," it is not necessary to allege in the indictment or prove that he knew the calf to be less than four weeks old. The defendant is bound to know the facts and obey the law at his peril.

Under the next clause of this section, the offence is not the killing of the calf, but "*knowingly*" selling, or having in possession with intent to sell, the meat of a calf killed when less than four weeks old; and this language makes the defendant's knowledge essential to be alleged and proved.

The legislature saw fit to make the man who kills, or causes to be killed, a calf for the purpose of sale, at all events punishable if the animal was less than four weeks old; but to punish the man who sells veal only in case he knows it to have been killed when under four weeks old.

Commonwealth *v.* Raymond, 97 Mass. 567.

Acts of 1894, 491, § 13.

Inspectors may enter buildings, etc.

For the purpose of inspecting or examining any animal, carcass, meat, fish, vegetables, produce, fruit or provisions of any kind under the provisions of this act, any inspector, duly qualified, may enter into any building or buildings,

or any part thereof, enclosure or enclosures, or other place where any such animal, carcass, meat, fish, vegetables, produce, fruit or provisions of any kind are stored or kept, or exposed for slaughter or sale, and may examine or inspect the same. Any person who prevents, obstructs or interferes with any such inspector or other person having the power and authority conferred upon inspectors under this section, in the performance of any of his duties as provided herein, or who shall hinder, obstruct or interfere with his making any such inspection or examination, or who shall secrete or remove any animal, carcass, meat, fish, vegetables, fruit or provisions of any kind, for the purpose of preventing the same from being inspected or examined under the provisions of this act, shall be subject to a fine not exceeding one hundred dollars, or to imprisonment in jail not exceeding sixty days, or by both such fine and imprisonment.

Penalty for obstructing inspector, etc.

Acts of 1894, 491, § 14.

When complaint is made on oath to any police, district or municipal court, or any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any diseased animal or carcass, or any tainted, diseased, corrupted, decayed or unwholesome meat, fish, vegetables, produce, fruit or provisions of any kind, or any veal of a calf killed under four weeks old, are kept or concealed in a particular building or place with the intent to kill, sell or offer for sale for food, the same or any product thereof, the court or magistrate, if satisfied there is reasonable cause for such belief, shall issue a warrant to search for such animals or articles, and all such warrants shall be directed and executed as provided in section three of chapter two hundred and twelve of the Public Statutes. If, upon hearing, said court or magistrate determines that any such diseased animal or carcass, or any such tainted, diseased, corrupted, decayed or unwholesome article, or any of them, were kept or concealed for any of the purposes aforesaid, the same shall be destroyed or disposed of by an inspector appointed hereunder, or by any officer designated by the court or magistrate, and such disposal shall be in accordance with

Search warrant to issue in certain cases.

the provisions of section ten of this act. If the court or magistrate does not so determine, said animals or articles shall be returned to the owner.

Acts of 1894, 491, § 15.

Penalty for sale of unwholesome meat, produce, etc.

Whoever knowingly sells or offers or exposes for sale, or has in his possession with the intent to sell, for food, any diseased animal, or any product thereof, or any tainted, diseased, corrupted, decayed or unwholesome carcass, meat, fish, vegetables, produce, fruit or provisions of any kind, or the veal of a calf killed under four weeks old, shall be punished by imprisonment in jail not exceeding sixty days, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment.

Acts of 1894, 491, § 16.

Board of health may cause publication of certain facts.

The board of health for the city or town where any animal or property has been condemned under the provisions of sections ten and twelve of this act, may cause to be published in two newspapers published in the county in which said property was found, a description of the place where such condemned property was found, and the name of every person in whose possession the same was found, and may also cause to be published the name of every person convicted of an offence under section fifteen of this act.

Acts of 1894, 491, § 17.
Acts of 1895, 496, § 3.

Proprietors of slaughter houses, etc., to make annual application for licenses.

The proprietor or proprietors of every slaughter house, canning, salting, smoking or rendering establishment, and of every establishment used for the manufacture of sausages or chopped meat of any kind, engaged in the slaughter of neat cattle, sheep or swine, the carcass or any of the meat or product of which is to be sold or used for food, shall within thirty days after the passage of this act, and thereafter annually in the month of April, make application to the mayor and aldermen of the city or the selectmen of the town where such slaughter house or establishment is located, for a license to carry on such business. Such application shall be in writing, signed by one or more of the owners thereof, or by one or more of the persons carrying on such business; if such owner or

Form of application.

the person carrying on such business be a corporation, then by some officer thereof thereto duly authorized. Such application shall give the name in full and address of all the owners or persons carrying on said business, the location of the slaughter house or establishment where said business is to be conducted, shall state the estimated number of neat cattle, sheep and swine to be slaughtered per week, the day or days of the week upon which it is intended to slaughter the same, and the nature of the product or products thereof to be sold or used for food. Every such application shall be sworn to before a justice of the peace.

Acts of 1894, 491, § 18.
Acts of 1895, 496, § 4.

License to carry on business of slaughtering.

The mayor and aldermen of cities and the selectmen of towns, or such other board of officers as they shall designate, may annually issue to persons applying therefor licenses to carry on the business of slaughtering neat cattle, sheep or swine, and there shall be paid to such city or town for every such license, by the person or persons obtaining the same, a fee of one dollar. Every such license shall name the person or persons licensed to conduct such business, the building or establishment where the same is to be carried on, and such license shall continue until the first day of May of the year next ensuing, or until sooner forfeited or rendered void. The board or officer of every city or town authorized to issue licenses hereby, shall keep a record of all applications for licenses under section seventeen, and shall record therein every license issued by him or them, and such records shall be competent evidence in any court of the issue of any such license. The board or officer of every city or town authorized to issue said licenses shall on or before the first day of June in each year send to the board of cattle commissioners a copy of every application made to them under section seventeen of this act, and shall state the doings of said board or officer upon said application; and shall further send to the board of cattle commissioners the names and addresses of all persons required to make application under section seventeen, who were engaged in such business on the last day of the previous April, and who have failed to make application as provided in said section.

Record of applications to be kept.

Acts of 1894, 491, § 19.
Acts of 1895, 496, § 5.

Slaughtering of cattle regulated.

No person or persons licensed under the preceding section shall slaughter or cause or authorize to be slaughtered at such slaughter house or establishment, except in the presence of an inspector, any neat cattle, sheep or swine on any day or days other than those specified in the application for such license, except that such licensee may at any time change the day or days for slaughtering such animals, by giving at least seven days' written notice of such change to the board or person authorized to issue licenses under the provisions of section eighteen; and such board or persons shall immediately give written notice of such change to all inspectors appointed by such city or town.

Acts of 1894, 491, § 20.
Acts of 1895, 496, § 6.

Duties and powers of inspectors.

It shall be the duty of the inspectors of animals and provisions of the several cities and towns, or when there is more than one inspector appointed for any such city or town and any one of them has been duly selected and ordered so to do by the board of health of such city or town, then of such inspector so selected and ordered, to be present at all licensed slaughter houses or establishments upon the day or days designated for slaughter in the application for such license, or at such other day or days as may be designated, under the provisions of section nineteen, and there carefully examine at the time of slaughter the carcasses of all neat cattle, sheep and swine slaughtered thereat. And it shall be the duty of such inspectors also to examine at the time of slaughter any and all neat cattle, sheep and swine slaughtered as provided in section twenty-one of this act, whenever notified so to do by the person slaughtering the same. Such inspection shall be made in such manner and under such rules and regulations as the board of cattle commissioners may from time to time determine and direct. Whenever, in the opinion of any inspector, any of said carcasses are diseased or any meat or product thereof is diseased, corrupted, unwholesome or unfit for food, he shall seize the same and cause it to

be destroyed, as provided in section ten of this act, subject however to the provisions therein contained concerning appeal and the disposal of money.

Acts of 1894 491, § 21.
Acts of 1895, 496, § 7.

Provisions of §§ 17–20 not to apply in certain cases.

None of the provisions of sections seventeen, eighteen, nineteen and twenty of this act shall apply to the slaughter from time to time by any person not engaged in such business, as provided in section seventeen, of one or more of his own neat cattle, sheep or swine, when the same are slaughtered upon his own premises other than a slaughter house or establishment mentioned in section seventeen, but such persons shall cause such carcass to be inspected at the time of slaughter, by an inspector of animals and provisions appointed under the provisions of this act, unless said animal is less than six months old, or has been duly inspected under the provisions of this act within six months prior to such slaughter and a certificate of health has been delivered to the owner or person in charge thereof, as provided in section six.

Acts of 1894, 491, § 22.
Acts of 1895, 496, § 8.

Penalty for slaughtering in violation of statutes.

Any person violating any of the provisions of sections eighteen, nineteen, twenty and twenty-one, or who, being engaged in the business of slaughtering neat cattle, sheep or swine, shall slaughter any neat cattle, sheep or swine or shall knowingly authorize or cause the same to be slaughtered with the intent of selling the carcass or any of the meat or product thereof for food, without first having applied for and obtained a license, as provided in sections seventeen and eighteen, or who, having obtained such license, slaughters or knowingly authorizes or causes to be slaughtered any neat cattle, sheep or swine, without causing the carcass thereof to be inspected as provided in section twenty, or who sells or authorizes or causes to be sold any carcass, meat or product of any neat cattle, sheep or swine, knowing that such carcass or the carcass from which such meat or product was obtained had not been inspected according to the provisions of sections twenty or twenty-one of this act, or who slaughters or knowingly

authorizes or causes to be slaughtered any neat cattle, sheep or swine, upon his own premises other than a slaughter house or establishment mentioned in section seventeen, without causing the carcass of such animal to be inspected, except as provided in section twenty-one, or who sells or authorizes or causes to be sold, the carcass or any meat or product thereof, of any such animal slaughtered upon his own premises, knowing that the same has not been inspected as provided in section twenty-one, shall be punished by a fine not exceeding five hundred dollars or by imprisonment in jail for not exceeding sixty days, or by both such fine and imprisonment.

Acts of 1894, 491, § 23.

Conviction under § 22 to render license void.

The conviction under section twenty-two of this act of any person licensed under the provisions of section eighteen shall itself render void the license to such person which is in force at the time of such conviction, and no new license shall be granted to such person for the balance of such term.

Acts of 1894, 491, § 24.

Board of health may take measures to prevent spread, etc., of contagious disease.

The boards of health of cities and towns may take all measures necessary or expedient to suppress or prevent the spread or introduction of any contagious disease among the animals of their respective cities and towns, and the immediate vicinity thereof, and for that purpose they may regulate or prohibit the passage from, to or through their respective cities and towns, or from place to place within the same, of any animal or animals, and may prohibit their departure from any building or enclosure or exclude any such therefrom, and they may arrest or detain, at the cost of the owner or owners, any animal or animals found passing, contrary to such regulation or prohibition, or found to be within such prohibited enclosure, and may take all other necessary measures to enforce such regulations or prohibitions.

Acts of 1894, 491, § 25.

May make regulations.

Such boards may from time to time make regulations in writing for their respective cities and towns for any of the purposes named in the preceding section. Such

regulations may be general or may be restricted to particular animals, places, districts, persons or class of persons. Such regulations shall be spread upon the records of their respective cities and towns and shall be published therein is such manner as may be provided in such regulations. A certified copy of all such regulations shall be immediately sent to the board of cattle commissioners.

Acts of 1894, 491, § 26.

Certain animals to be quarantined, etc.; cattle commissioners and owners to be notified.

Said boards, in case of the existence of any contagious disease among domestic animals within the limits of their several cities and towns, and whenever directed so to do by the board of cattle commissioners or any of its members, shall cause the animals which are, or which they have good reason to believe are, infected with any contagious disease, or which are designated in such order, to be quarantined, secured, collected or isolated in some suitable place or places within the limits of such city or town, and shall immediately give written notice thereof to the board of cattle commissioners. When any such animal or animals are quarantined, collected or isolated upon the premises of the owner or person found in the possession thereof, written notice of such quarantine or isolation shall be given to such owner or person and be served, returned and recorded in the same manner and with the same force and effect as is provided in sections seven and eight of this act.

Acts of 1894, 491, § 27.
Acts of 1895, 496, § 9.

Payment of expense of quarantine, etc.

When any animals are quarantined, collected or isolated under the provisions of this act, upon the premises of the owner or of the person in possession thereof at the time such quarantine is imposed, the expense thereof shall be paid by such owner or person in possession thereof; but whenever specific animals are quarantined or isolated under the provisions of sections seven, twenty-six and forty-five of this act, more than ten days upon such premises, as suspected of being afflicted with a contagious disease, and the owner is forbidden to sell any of the product thereof for food, or whenever any animals are

quarantined, collected or isolated on any premises other than those of such owner or person in possession thereof, the expense of such quarantine shall be paid by the Commonwealth.

Acts of 1894, 491, § 28.

Appointment of officers, agents, assistants, etc.

For all purposes named in this act the boards of health of the several cities and towns shall have the same power and authority to appoint officers, agents and assistants as are provided in sections ten and sixteen of chapter eighty of the Public Statutes; and when so appointed such officers, agents and assistants shall be subject to all the provisions of law applicable to those appointed under the provisions of said sections. In the absence of any such appointment the inspectors appointed under sections one and two of this act shall be the agents of such boards for all purposes designated in this act.

Acts of 1894, 491, § 29.

Notice to be given of contagious disease to board of health.

Every person, except the members of the board of cattle commissioners, who has knowledge of or has good reason to suspect the existence of any contagious disease among any species of domestic animals within the limits of this Commonwealth, or that any domestic animal is affected with any such contagious disease, whether such knowledge is obtained by personal examination or otherwise, shall immediately give written notice thereof to the board of health of the city or town where such diseased animal or animals are kept, and for failure so to do shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in jail not exceeding one year.

Penalty.

Acts of 1894, 491, § 30.

Animals to be inspected on receipt of notice.

Upon the receipt of such notice from any person other than a duly appointed inspector of animals and provisions for such city or town, such board of health shall forthwith cause such animal to be inspected by an inspector or by a competent veterinarian appointed by them for that purpose, and if upon such inspection such board or such inspector suspects or has reason to believe that contagion exists he or they shall proceed according to the provisions of sections seven, eight, nine and twenty-six of this act.

Acts of 1894, 491, § 31.

Penalty for neglect.

A city or town whose officers refuse or neglect to carry into effect the provisions of sections twenty-four, twenty-five, twenty-six and thirty of this act shall forfeit a sum not exceeding five hundred dollars for each day's neglect.

Acts of 1894, 491, § 32.

Recovery of fines, etc.

All fines and forfeitures imposed upon cities or towns under sections two and thirty-one may be recovered by complaint or indictment to the use of the Commonwealth, or the same may be recovered in an action of tort, in the name of the board of cattle commissioners, to the use of the Commonwealth, and such complaint, indictment or action may be maintained in any county.

Acts of 1894, 491, § 33.

May take land for quarantine.

The boards of health of cities and towns, when in their judgment it is necessary to carry into effect the provisions of this act may, within the limits of their respective cities and towns, take and hold for a term not exceeding one year any land without buildings, other than barns or stables, thereon, upon which to enclose, quarantine and isolate any animals. They shall cause the damage sustained by any person in consequence of such taking and holding to be appraised by the assessors of the city or town wherein the land so taken is situated, and shall further, within thirty days after any such taking, cause to be entered upon the records of such city or town a description of such land sufficiently accurate for identification, together with the amount of the damages so appraised. The amount of said appraisement shall be paid by such city or town, in such sums and at such times as the board of health may order. Any person aggrieved by such appraisement or order may, by an action of contract commenced at any time within three months after such taking, recover of the city or town wherein the land lies, reasonable compensation for the damages so sustained by him. If, upon trial, the damages are increased beyond such appraisement, exclusive of interest, he shall recover his costs; otherwise he shall pay costs. The

Damages.

Description of land to be recorded.

Persons aggrieved may recover by an action of contract, etc.

State to reimburse towns, etc.

Commonwealth shall reimburse to such city or town four fifths of the amount of such appraisal or judgment paid by such city or town, when certified by the treasurer of the city or town paying the same.

Acts of 1894, 491, § 34.

Animals quarantined to be deemed affected with contagious disease.

Every animal quarantined or isolated by order of the board of cattle commissioners or any of its members, or by any board of health or inspector, in accordance with the provisions of this act, shall, during the continuance of such quarantine or isolation, be deemed to be affected with a contagious disease.

Penalty for breaking quarantine, or unlawful sale, or removal of animals.

Any person who shall knowingly break or authorize or cause to be broken any quarantine imposed under the provisions of this act, or who shall knowingly remove, authorize or cause to be removed from any building, place or enclosure where the same is quarantined or isolated, any animal contrary to such order of quarantine or isolation, or who shall knowingly place or cause or authorize to be placed any other animal or animals within a building, place or enclosure where any animal or animals are quarantined, or in contact therewith, contrary to any order or notice of quarantine, or who shall knowingly conceal, sell, remove or transport, or knowingly cause or authorize to be concealed, sold, removed or transported, any animal, knowing or having reasonable cause to believe that such animal is affected with a contagious disease, or who shall knowingly authorize or permit any such animal to go at large upon any way, street or highway within the limits of this Commonwealth, or who shall knowingly bring or authorize or permit to be brought from any other country, state, district or territory into this Commonwealth, any animal that is affected with or has been exposed to any contagious disease, or who shall disobey any lawful order or regulation of any board of health or of any inspector in the discharge of his or their duty under the provisions of this act, shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment.

Penalty for violation of rules, etc.

Acts of 1894, 491, § 35.

Every person who kills or causes to be killed, with the consent of the owner or person in possession thereof, any animal under suspicion that the same is affected with or has been exposed to a contagious disease, and who, upon the inspection of the carcass thereof, finds or is of the opinion that the same is affected with a contagious disease, shall notify such owner or person in possession thereof of the existence of such disease, and shall also immediately notify the board of cattle commissioners of the same and of the place where the animal was found, the name of the owner or owners, or person or persons in possession thereof, and of the disposal made of such carcass. Any person violating the provisions of this section shall be subject to the same penalties as are provided in section fifteen of this act.

Cattle commissioners and owners to be notified when carcasses are found to be affected with contagious diseases.

Penalty.

Acts of 1894, 491, § 36.

The board of cattle commissioners created by chapter three hundred and seventy-eight of the acts of the year eighteen hundred and eighty-five shall hereafter consist of not more than five members, and the governor, with the advice and consent of the council, shall appoint two additional commissioners, one for the term of two years and one for the term of three years, and upon the expiration of the term of office of any of said commissioners shall thereafter appoint a successor or successors for the term of three years. Said additional commissioners shall be subject to the provisions of said chapter three hundred and seventy-eight, so far as the same are applicable.

Additional cattle commissioners to be appointed; term of office.

Acts of 1894, 491, § 37.

Contagious diseases under the provisions of this act shall include glanders, farcy, contagious pleuro-pneumonia, tuberculosis, Texas fever, foot-and-mouth disease, rinderpest, hog cholera and rabies.

Contagious diseases specified.

Acts of 1894, 491, § 38.

The board of cattle commissioners shall have power to make from time to time orders and regulations concerning the extirpation, prevention and suppression of con-

Powers of cattle commissioners.

tagious diseases among domestic animals, or concerning the destruction, care and treatment of animals affected with, or which have been exposed to, any contagious disease. They shall further have throughout the Commonwealth all the power and authority herein conferred upon boards of health by sections twenty-four, twenty-five, twenty-six and thirty-three of this act.

Acts of 1894, 491, § 39.

Duties of cattle commissioners.

The board of cattle commissioners shall from time to time make orders and regulations concerning the inspection and examination of animals, and the carcasses, meat and product thereof, concerning the quarantine, killing, burial and disposal of animals or carcasses affected with or which have been exposed to contagious disease, and concerning the cleansing and disinfecting of districts, buildings or places where such contagion exists or has existed. Such board shall further from time to time make and prescribe forms of records of inspectors, certificates of examinations, notices and orders of quarantine, orders for killing and burial, and all returns to be made by inspectors and boards of health which are required or provided for under the provisions of this act.

Acts of 1894, 491, § 40.

Orders and regulations of cattle commissioners, publication, etc.

All orders and regulations made by the board of cattle commissioners under the provisions of this act shall be spread upon the records of such board, and a copy thereof shall be sent to each city or town to which the regulation or order applies, and shall be published by such board, or by the city or town to which they are directed, in such manner as such orders and regulations shall prescribe, or such orders or regulations may be directed to boards of health or inspectors; and in such case a copy of the same shall be mailed to the board of health of every city or town included in such order, or to every known inspector appointed for the same.

To supersede orders of boards of health.

All orders and regulations made by the board of cattle commissioners under the provisions of this act shall supersede those made by the boards of health under sections twenty-four, twenty-five and twenty-six hereof.

Acts of 1894, 491, § 41.

Hospitals and quarantines may be established.

The board of cattle commissioners may establish hospitals or quarantines, with proper accommodations, wherein, under prescribed regulations, animals by such commissioners selected may be confined and treated for the purpose of determining the varying characteristics of and the methods by which a specific contagion may be disseminated or destroyed, and they may direct boards of health and inspectors to enforce and carry into effect all such regulations as may from time to time be made for that end.

Acts of 1894, 491, § 42.

Enforcement of regulations.

The boards of health for the several cities and towns, and every inspector of animals and provisions appointed under the provisions of this act, shall carry out and enforce all lawful regulations, orders and directions of the board of cattle commissioners or any of its members, to them or him directed, and any such officer or inspector who refuses or neglects to carry out the same shall be punished by a fine not exceeding five hundred dollars for every such offence.

Penalty.

Acts of 1894, 491, § 43.

Officers, agents and assistants, appointment, etc.

The board of cattle commissioners shall have the power and authority to appoint from time to time such officers, agents and assistants as are necessary or expedient to carry out the purposes of this act and to remove any and all of the same. All such officers, agents and assistants shall have the power and authority conferred upon inspectors under the provisions of sections thirteen and fifty-seven hereof, and shall receive such compensation as such board shall determine.

Acts of 1894, 491, § 44.

Power and authority of cattle commissioners.

Each member of the board of cattle commissioners shall have throughout the Commonwealth all the power and authority conferred upon boards of health under section twenty-six of this act, and all the power and authority conferred upon inspectors of animals and provisions under sections four, six, seven, eight, ten, twelve, thirteen and twenty of this act: *provided, however*, that

Proviso.

no appeal from any act done by any of said commissioners shall lie to the board of health, as provided in said sections ten, twelve and twenty. Each such commissioner shall have the same power and authority to quarantine or isolate animals which have been exposed to a contagious disease, when in his judgment it is necessary or expedient so to do. Whenever any animal is quarantined or isolated by order of any of said commissioners such quarantine or isolation shall continue until the further order of such commissioner of the board of cattle commissioners.

Acts of 1894, 491, § 45.
Acts of 1895, 496, § 10.

Certain animals to be isolated or killed.

When the board of cattle commissioners or any of its members, by an examination of a case of contagious disease among domestic animals, becomes satisfied that the public good requires it, such board or commissioner shall cause such animal or animals affected therewith to be securely isolated, or shall cause it or them to be killed without appraisal or payment. Such order of killing shall be in writing and may be directed to the board of health, inspector or other person, and shall contain such direction as to the examination and disposal of the carcass, and the cleansing and disinfecting of the premises where such animal was condemned, as such board or commissioner shall deem expedient. A reasonable sum may be paid out of the treasury of the Commonwealth for the expense of such killing and burial. If it shall subsequently appear, upon post mortem examination or otherwise, that such animal was free from the disease for which it was condemned, a reasonable sum therefor shall be paid to the owner thereof by the Commonwealth: *provided, however*, that whenever any cattle condemned as afflicted with the disease of tuberculosis are killed under the provisions of this section the full value thereof at the time of condemnation not exceeding the sum of sixty dollars for any one animal, shall be paid to the owner thereof out of the treasury of the Commonwealth if such animal has been owned within the state six months continuously prior to its being killed, provided, such person shall not have, prior thereto, in the judgment of the cattle com-

A reasonable sum to be paid to owner.

Proviso.

missioners, by wilful act or neglect, contributed to the spread of tuberculosis; but such decision on the part of the commissioners shall not deprive the owner of the right of arbitration as hereinafter provided.

Acts of 1895, 496, § 11.

Arbitrators to be appointed in case of failure to agree.

If the owner, who is entitled to compensation for an animal destroyed as affected with tuberculosis under section forty-five of said chapter four hundred and ninety-one, and the commissioner condemning the same cannot agree as to the value of the animal so condemned, the question of such value shall be determined by arbitrators, one to be selected by the commissioner, one to be selected by the owner; or if the owner neglects or refuses for twenty-four hours to select an arbitrator, the one already selected shall select a second, and if these two cannot agree, a third to be selected by the two arbitrators first selected. Such arbitrators shall be sworn faithfully to discharge the duties of their office, and shall determine the value of such animal according to the provisions of said section forty-five, and the full value so determined shall be paid to the owner as provided in said section.

Aggrieved persons may petition for damages.

Either party aggrieved by the doings of the cattle commissioners, or any of its members, under the provisions of said section forty-five, or by the award of such arbitrators, may petition the superior court for the county where such animal was killed, or for the county of Suffolk, to have the damages assessed; such petition shall be by or against the board of cattle commissioners, and a copy thereof shall be served upon the defendant, or if the petition is against said board of cattle commissioners, upon one of the commissioners, in the same manner as is provided for the service of other civil process. Such petition shall be filed in the clerk's office of the superior court for said county within thirty days after the killing of such animal or animals. Such petition shall be subject to the provisions of section sixty-nine of chapter one hundred and sixty-seven of the Public Statutes, and a trial may be had thereon at the bar of the court in the same manner as other civil cases are tried. If upon such trial it shall be determined that such animal was not

affected with the disease for which it was condemned, reasonable compensation may be recovered therefor, and if the owner recovers damages in excess of the amount previously awarded him by the arbitrators, or allowed him by the commissioners, he shall recover his costs; otherwise he shall pay costs. The damages, costs and expenses incurred by the commissioners in prosecuting or defending any such action shall be paid by the Commonwealth.

Payment of damages, costs and expenses.

Acts of 1895, 496, § 12.

Commissioners may examine persons under oath.

The commissioners may examine under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or danger of dissemination, of contagious diseases among domestic animals, or concerning any other matter within the provisions of this act and said chapter four hundred and ninety-one, and each of said commissioners shall have all the powers vested in justices of the peace to take depositions, to compel witnesses to attend and testify before said commission, and to administer oaths for any of the purposes of this act by chapters one hundred and fifty-five and one hundred and sixty-nine of the Public Statutes. The fees for such witnesses for attendance and travel shall be the same as for witness before the superior court. All costs and expenses incurred in procuring the attendance of such witnesses shall be allowed and paid by the Commonwealth. Copies of the records of the board of cattle commissioners or of any regulation or order issued by said board or any of its members under the provisions of this act, when duly certified by the secretary of said board, and any certificate by said secretary of the issuing, recording, delivering or publishing of any such orders or regulations under the provisions of section forty, shall be competent evidence of such fact in any tribunal.

Costs and expenses.

Acts of 1894, 491, § 47.

Penalty for failure to comply.

Any person who fails to comply with a regulation made or an order given by the board of cattle commissioners or any of its members, in the discharge of his or their duty, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Acts of 1894, 491, § 48.

Prosecutions. Prosecutions under sections thirteen, twenty-nine, thirty-four, thirty-five, forty-two and forty-seven of this act shall be instituted and maintained in the county where the offence was committed.

Acts of 1894, 491, § 50.

Animals killed may be sold when not diseased. When any animal or animals are killed by order of the board of cattle commissioners or any of its members, the carcass or carcasses thereof may be inspected by such board or commissioner, or by a competent person by them or him appointed, and if found entirely free from disease and in a wholesome condition for food, the same may be sold by them or him or by their or his order, and the proceeds of such sale shall be applied in payment of the value of said animal or animals.

Acts of 1894, 491, § 51.

Report of commissions. The board of cattle commissioners shall keep a full record of their doings and report the same to the legislature on or before the tenth day of January in each year, unless sooner required by the governor; and an abstract of the same shall be printed in the annual report of the state board of agriculture.

Acts of 1894, 491, § 52.

May appoint clerk; compensation. The board of cattle commissioners may appoint a clerk to keep the record of their doings, who shall receive such compensation, not exceeding the sum of five hundred dollars a year, as they shall determine.

Acts of 1894, 491, § 53.

Animals from infected places outside the state may be seized. When animals are transported within this state from localities beyond its boundary lines, which localities the board of cattle commissioners deem to be infected, such animals may be seized and quarantined by the commissioners at the expense of the owners or consignees thereof, so long as the public safety may require; and if, in their judgment, it is necessary to secure that safety, they may cause such animals to be killed without appraisal or payment for the same.

Acts of 1894, 491, § 54.

Certain cattle not to be driven on streets.

No Texan, Mexican, Cherokee, Indian or other cattle, which the cattle commissioners decide may spread contagious disease, shall be driven on the streets of any city, town or village, or on any road in this Commonwealth, nor shall they be driven outside the stock yards connected with any railway in this Commonwealth contrary to any order of the board of cattle commissioners.

Acts of 1894, 491, § 55.

To be kept in different pens.

In all stock yards within this Commonwealth said Texan, Mexican, Cherokee, Indian or other cattle, which the cattle commissioners decide may spread contagious disease, shall be kept in different pens from those in which other cattle are kept.

Acts of 1894, 491, § 56.

Penalty.

Any person or persons violating any of the provisions of the two preceding sections shall be punished by a fine of not less than twenty nor more than one hundred dollars.

Acts of 1894, 491, § 57.

Sheriffs and others to assist when required.

Every cattle commissioner, member of a board of health, or inspector, shall have power to call on sheriffs, constables and police officers to assist him or them in the discharge of the duties provided for in this act, and it is hereby made the duty of sheriffs, constables and police officers to assist such commissioner, member or inspector, when requested so to do, and he or they shall have the same powers and protection as peace officers, while engaged in the discharge of his or their duties.

Acts of 1894, 491, § 58.

Violations may be enforced by injunction.

Courts of equity in term time or vacation may, by injunction or other proper order, upon application of the board of cattle commissioners, enforce or restrain violations of the provisions of this act.

Acts of 1894, 491, § 59.

Repeal.

Chapter fifty-eight of the Public Statutes, chapter two hundred and fifty-two of the acts of the year eighteen hundred and eighty-seven, chapters one hundred and

ninety-five and four hundred and thirty-two of the acts of the year eighteen hundred and ninety-two, chapter three hundred and six of the acts of the year eighteen hundred and ninety-three, and all other acts or parts of acts inconsistent herewith, are hereby repealed: *provided, however*, that nothing herein contained shall affect any prosecution, action or proceeding begun or pending, any penalty incurred, or any order or regulation issued, under any of said acts before this act takes effect; and *provided, further*, that all inspectors and agents appointed under any of such acts shall continue to hold office during the term for which they were appointed, unless sooner removed as provided by law, but they shall be subject to all the provisions of this act. Provisos.

Acts of 1895, 496, § 14.
Acts of 1896, 276.

Until June first eighteen hundred and ninety-seven the use of tuberculin as a diagnostic agent for the detection of the disease known as tuberculosis in domestic animals shall be restricted to cattle brought into the Commonwealth from any point without its limits, and to all cattle held in quarantine at Brighton, Watertown and Somerville: *provided, however*, that tuberculin may be used as such diagnostic agent on any animal or animals in any other portion of the state upon the consent in writing of the owner or person in possession thereof, and upon any animals condemned as tuberculous upon physical examination by a competent veterinarian. Use of tuberculin restricted. Proviso.

Under the Statute of 1887, chap. 252, sect. 13, which authorizes the summary killing of animals having the farcy or glanders, with no provision for compensation to the owner, an adjudication of the cattle commissioners that an animal has the disease is not conclusive; and an order issued by them for killing an animal not in fact infected is no defence to those executing the order in a subsequent action by the owner for compensation.

Miller *v.* Horton, 152 Mass. 540.

Section 13 of chap. 252 of the Acts of 1887 was repealed by 1893, chap. 306, and 1887, chap. 252, was entirely repealed by 1894, chap. 491, sect. 59.

MEDICAL SOCIETIES; DEGREES OR DIPLOMAS.

Acts of 1883, 268, § 1.

Medical societies not to confer degrees unless authorized by legislature.

No corporation organized for medical purposes under the provisions of chapter one hundred and fifteen of the Public Statutes shall confer degrees, or issue diplomas or certificates conferring or purporting to confer degrees, unless specially authorized by the legislature so to do.

Acts of 1883, 268, § 2.

Penalty for violation of act.

An officer, agent or servant of any corporation mentioned in section one, or any other person conferring degrees, or signing, issuing or authorizing the signing or issuing of any diploma or certificate purporting to confer any degree of medicine or surgery, contrary to the provisions of this act, shall be punished by fine of not less than five hundred dollars, nor more than one thousand dollars. [See also 1893, 355.]

COLOR-BLINDNESS AND DEFECTIVE SIGHT.

P. S., 112, § 179.
Acts of 1883, 125.

Railroad employees to be examined relative to color-blindness and defective sight.

No railroad corporation shall employ or keep in its employment, in a position which requires the person employed therein to distinguish form or color signals, any person, unless he has been examined for color-blindness or other defective sight by some competent person employed by the corporation and has received a certificate that he is not disqualified for such position by color-blindness or other defective sight. A railroad corporation shall forfeit one hundred dollars for each violation of the provisions of this section.

INSTRUCTION IN PHYSIOLOGY AND HYGIENE; ALCOHOL, STIMULANTS AND NARCOTICS.

Acts of 1885, 332.

Physiology and hygiene to be taught in public schools, including special

Physiology and hygiene, which, in both divisions of the subject, shall include special instruction as to the effects of alcoholic drinks, stimulants and narcotics on

the human system, shall be taught as a regular branch of study to all pupils in all schools supported wholly or in part by public money, except special schools maintained solely for instruction in particular branches, such as drawing mechanics, art, and like studies. All acts or parts of acts relating to the qualifications of teachers in the public schools shall apply to the branch of study prescribed in this act.

Instruction as to effects of alcohol, etc.

SANITARY PROVISIONS IN FACTORIES AND WORKSHOPS, SCHOOL-HOUSES AND OTHER PUBLIC BUILDINGS.

P. S., 103, § 9.

The governor shall appoint two or more of the district police to act as inspectors of factories and public buildings. In a district where a district police officer is appointed to act as such inspector, the governor may appoint an additional district police officer; but the whole district police force shall not exceed sixteen men.

Governor to appoint inspectors of factories and public buildings.

Acts of 1894, 508, § 33.

Every factory in which five or more persons are employed, and every factory, workshop, mercantile or other establishment or office in which two or more children, young persons or women are employed, shall be kept in a cleanly state and free from effluvia arising from any drain, privy or other nuisance, and shall be provided, within reasonable access, with a sufficient number of proper water-closets, earth-closets or privies for the reasonable use of the persons employed therein; and wherever two or more male persons and two or more female persons are employed as aforesaid together, a sufficient number of separate and distinct water-closets, earth-closets, or privies shall be provided for the use of each sex and plainly so designated, and no person shall be allowed to use any such closet or privy assigned to persons of the other sex.

Factories to be kept clean and provided with sanitary measures.

(This and the following sections were enacted to amend sections 1 and 2 of chapter 103 of the Acts of 1887.)

1888

Acts of 1894, 508, § 34.

It shall be the duty of every owner, lessee or occupant of any premises so used as to come within the provisions of section thirty-three of this act to carry out the same

Owner or occupant to make proper changes.

Action to recover expenses, how made.

1888

and to make the changes necessary therefor. In case such changes are made upon the order of an inspector of factories by the occupant or lessee of the premises he may at any time within thirty days of the completion thereof bring an action before any trial justice, police, municipal or district court against any other person having an interest in such premises, and may recover such proportion of the expense of making such changes as the court adjudges should justly and equitably be borne by such defendant.

Acts of 1894, 508, § 35.

Inspectors of factories to notify boards of health of sanitary defects, etc.

When it appears to an inspector of factories that any act, neglect or fault in relation to any drain, water-closet, earth-closet, privy, ash-pit, water-supply, nuisance or other matter in a factory or in a workshop, included under section thirty-three of this act, is punishable or remediable under chapter eighty of the Public Statutes, or under any law of the Commonwealth relating to the preservation of the public health, but not under this act, such inspector shall give notice in writing of such act, neglect or default to the board of health of the city or town within which such factory or workshop is situated, and it shall thereupon be the duty of such board of health to make enquiry into the subject of the notice, and to enforce the laws relative thereto.

Acts of 1894, 508, § 36.

Criminal prosecution for violation of §§ 33, 34, not to be instituted until four weeks after notice, etc.

No criminal prosecution shall be instituted against any person for a violation of the provisions of sections thirty-three and thirty-four of this act until four weeks after notice in writing by an inspector of factories of the changes necessary to be made to comply with the provisions of said sections has been sent by mail or delivered to such person, nor then, if in the mean time such changes have been made in accordance with such notification. A notice shall be deemed a sufficient notice under this section to all members of a firm or to a corporation when given to one member of such firm, or to the clerk, cashier, secretary, agent or any other officer having charge of the business of such corporation, or to its attorney; and in case of a foreign corporation notice to

the officer having the charge of such factory or workshop shall be sufficient; and such officer shall be personally liable for the amount of any fine in case a judgment against the corporation is returned unsatisfied.

Acts of 1894, 508, § 37.

Factories to be properly ventilated.

Every factory in which five or more persons are employed, and every workshop in which five or more children, young persons or women, are employed, shall, while work is carried on therein be so ventilated that the air shall not become so exhausted or impure as to be injurious to the health of the persons employed therein, and shall also be so ventilated as to render harmless, so far as is practicable, all gases, vapors, dust or other impurities generated in the course of the manufacturing process or handicraft carried on therein which may be injurious to health. **1887**

Acts of 1894, 508, § 38

Mechanical ventilation to be required where dusty processes are conducted.

If in a workshop or factory included in section thirty-seven of this act any process is carried on by which dust is generated and inhaled to an injurious extent by the persons employed therein, and it appears to an inspector of factories that such inhalation could be to a great extent prevented by the use of a fan or by other mechanical means, and that the same can be provided without incurring unreasonable expense, such inspector may direct a fan or other mechanical means of a proper construction to be provided within a reasonable time, and such fan or other mechanical means shall be so provided, maintained and used. **1887**

Acts of 1894, 508, § 39.

Criminal prosecution for violation of §§ 37 and 38 not to be instituted till four weeks after notice.

No criminal prosecution shall be instituted for any violation of the provisions of sections thirty-seven and thirty-eight of this act unless such employer shall have neglected for four weeks to make such changes in his factory or workshop as shall have been ordered by an inspector of factories, by a notice in writing delivered to or received by such employer. [For penalties, see §§ 75 and 78.] **1888**

Acts of 1894, 508, § 40.

Sanitary provisions for public buildings and schoolhouses.

1888

Every public building and every schoolhouse shall be kept in a cleanly state and free from effluvia arising from any drain, privy or other nuisance, and shall be provided with a sufficient number of proper water-closets, earth-closets or privies for the reasonable use of the persons admitted to such public building or of the pupils attending such schoolhouse.

Acts of 1894, 508, § 41.

To be properly ventilated.

1888

Every public building and every schoolhouse shall be ventilated in such a proper manner that the air shall not become so exhausted as to be injurious to the health of the persons present therein. The provisions of this section and the preceding section shall be enforced by the inspection department of the district police.

Acts of 1894, 508, § 42.

Inspector may issue order in certain cases.

1888

Whenever it appears to an inspector of factories and public buildings that further or different sanitary provisions or means of ventilation are required in any public building or schoolhouse, in order to conform to the requirements of this act, and that the same can be provided without incurring unreasonable expense, such inspector may issue a written order to the proper person or authority, directing such sanitary provisions or means of ventilation to be provided, and they shall thereupon be provided, in accordance with such order, by the public authority, corporation or person having charge of, owning or leasing such public building or schoolhouse.

Acts of 1894, 508, § 43.

Officials to carry out orders of inspector.

Any school committee, public officer, corporation or person shall within four weeks after the receipt of an order from an inspector, as provided in the preceding section, provide the sanitary provisions or means of ventilation required thereby. [For penalty, see § 75.]

Acts of 1894, 508, § 75.

Refusing to obey order of inspector.

Any school committee, public officer, corporation, or person, neglecting for four weeks to obey an order from an inspector under section forty-two of this act, shall be punished by fine not exceeding one hundred dollars.

Acts of 1894, 508, § 78.

Any person violating any provision of this act where no special provision as to the penalty for such violation is made shall be punished by fine not exceeding one hundred dollars. Penalty.

Acts of 1894, 508, § 57.

The following expressions used in this act shall have the following meanings: — Certain expressions defined.

1887

The expression "person" means any individual, corporation, partnership, company or association.

The expression "child" means a person under the age of fourteen years.

The expression "young person" means a person of the age of fourteen years and under the age of eighteen years.

The expression "woman" means a woman of eighteen years of age and upwards.

The expression "factory" means any premises where steam, water or other mechanical power is used in aid of any manufacturing process there carried on.

The expression "workshop" means any premises, room or place, not being a factory as above defined, wherein any manual labor is exercised by way of trade or for purposes of gain in or incidental to any process of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article, and to which or over which premises, room or place, the employer of the persons working therein has the right of access or control: *provided, however*, that the exercise of such manual labor in a private house or private room by the family dwelling therein or by any of them, or in case a majority of the persons therein employed are members of such family, shall not of itself constitute such house or room a workshop within this definition.

The expression "iron works" means any mill, forge or other premises in or on which any process is carried on for converting iron into malleable iron, steel or tin plate, or for otherwise making or converting steel.

The expression "glass works" means any premises in which the manufacture of glass is carried on.

The expression "paper mills" means any premises in which the manufacture of paper is carried on.

The expression "letter press establishments" means any premises in which the process of letter press printing is carried on.

The expression "print works" means any premises in which is carried on the process of printing figures, patterns or designs upon any cotton, linen, woollen, worsted or silken yarn or cloth, or upon any woven or felted fabric not being paper.

The expression "bleaching works" means any premises in which the process of bleaching any yarn or cloth of any material is carried on.

The expression "dyeing works" means any premises in which the process of dyeing any yarn or cloth of any material is carried on.

The expression "public building" means any building or premises used as a place of public entertainment, instruction, resort or assemblage.

The expression "schoolhouse" means any building or premises in which public or private instruction is afforded to not less than ten pupils at one time.

The aforesaid expressions shall have the meanings above defined for them respectively in all laws of this Commonwealth, relating to the employment of labor, whether heretofore or hereafter enacted, unless a different meaning is plainly required by the context.

THE SALE OF CLOTHING MADE IN UNHEALTHY PLACES.

Acts of 1894, 508, § 44.

Places for making clothing to be deemed workshops, — to be kept clean, and open to inspection by district police. Notice to be given.

1891
1892
1893

Whenever any house, room or place used as a dwelling, is also used for the purpose of carrying on any process of making, altering, repairing or finishing for sale any ready-made coats, vests, trousers, overcoats or any wearing apparel of any description whatsoever, intended for sale, it shall, within the meaning of this act, be deemed a workshop; and every person so occupying or having control of any such workshop shall, within fourteen days from the time of beginning work in such

workshop, notify the chief of the district police or the special inspector appointed for that purpose, of the location of such workshop, the nature of the work there carried on, and the number of persons therein employed; the exercise of such work in a private house or private room however by the family dwelling therein, or by any of them, shall not of itself constitute such house or room a workshop within the meaning of this act: *provided*, that such family or any member of such family engaged in the process of making, altering, repairing or finishing for sale any such coats, vests, trousers, overcoats or any wearing apparel of any description whatsoever, intended for sale, in a private house or private room used as a dwelling as aforesaid, shall before beginning such work procure a license, approved by the chief of the district police, upon the recommendation of the inspectors especially appointed for the enforcement of the provisions of sections forty-four, forty-five, forty-six, forty-seven and forty-eight of this act; and no person, contractor, firm or corporation shall give to any person not holding said license any such garments or articles of wearing apparel, intended for sale, to be made in any private house or room as aforesaid; and every such workshop, and every such private house or private room shall be kept in a cleanly state and shall be subject to the provisions of this section; and each of said garments made, altered, repaired or finished for sale in any of such workshops, private houses or rooms shall be subject to the inspection and examination of the inspectors of the district police, for the purpose of ascertaining whether said garments or any of them, or any part or parts thereof, are in cleanly condition and free from vermin and every matter of an infectious or contagious nature.

Acts of 1894, 508, § 45.

District police and state board of health to be notified of existence of infection.

If said inspector finds evidence of infectious disease present in any workshop, or in goods manufactured or in the process of manufacture therein, he shall report the same to the chief of the district police, who shall then notify the state board of health to examine said workshop and the materials used therein, and if said board shall

1891
1893

find said workshop in an unhealthy condition, or the clothing and materials used therein unfit for use, said board shall issue such order or orders as the public safety may require.

Acts of 1894, 508, § 46.

Inspector to examine goods shipped to this state and state board of health to make such orders as are required.

1891
1892

Whenever it is reported to said inspector, or to the chief of the district police, or to the state board of health, or to either of them, that ready-made coats, vests, trousers, overcoats or other garments are being shipped to this Commonwealth, having previously been manufactured in whole or in part under unhealthy conditions, said inspector shall examine said goods and the condition of their manufacture, and if upon such examination said goods or any of them are found to contain vermin, or to have been made in improper places or under unhealthy conditions, he shall make report thereof to the state board of health, which board shall thereupon make such order or orders as the public safety shall require.

Acts of 1894, 508, § 47.

Tags or labels to be affixed to tenement-made garments.

1891
1892

Whoever knowingly sells or exposes for sale any ready-made coats, vests, trousers, overcoats or any wearing apparel, which have been made in a tenement house used as a workshop, as specified in section forty-four of this act, shall have affixed to each of said garments a tag or label, not less than two inches in length and one inch in width, upon which shall be legibly printed or written, the words "Tenement made", and the name of the state and the town or city where such garment or garments were made.

Acts of 1894, 508, § 48.

No such garments to be sold without tags or labels.

1891

No person shall sell or expose for sale any of said garments without a tag or label, as aforesaid, affixed thereto, nor sell or expose for sale any of said garments with a false or fraudulent tag or label, nor wilfully remove, alter or destroy any such tag or label upon any of said garments when exposed for sale.

Acts of 1894, 508, § 63.

Penalty.

Whoever violates any of the provisions of this act relating to the manufacture and sale of clothing made in unhealthy places shall be punished by fine not exceeding one hundred dollars and not less than fifty dollars.

Acts of 1894, 508, § 76.

Any person, firm or corporation violating the provisions of sections forty-four to forty-eight inclusive of this act, shall be punished by fine not exceeding five hundred dollars and not less than fifty dollars. Penalty.

THE LICENSING OF PLUMBERS AND REGULATIONS OF PLUMBING.

Acts of 1894, 455, § 1.

No person, firm or corporation shall engage in or work at the business of plumbing, either as a master or employing plumber, or as a journeyman plumber, unless such person, firm or corporation has received a license or certificate therefor in accordance with the provisions of this act. The words "practical plumber", as used in this act, shall be deemed to mean a person who has learned the business of plumbing, by working for at least two years either as an apprentice or under a verbal agreement for instruction, and who has then worked for at least one year as a first class journeyman plumber. The word "journeyman", as used in this act, shall be deemed to mean one who personally does any work in plumbing which is subject to inspection, under chapter four hundred and nineteen of the acts of the year eighteen hundred and ninety-two, or under any ordinance, by-law, rule or regulation made under the authority of this act. Licensing of plumbers. Meaning of terms used.

Acts of 1894, 455, § 2.

Any person not engaged in or working at the business of plumbing prior to the tenth day of July in the year eighteen hundred and ninety-three, and desiring to engage in or work at said business, either as a master or employing plumber, or as a journeyman plumber, shall apply to the board of health having jurisdiction in the locality where he intends to engage in or work at said business, except in cities or towns where the inspector of buildings has control of the enforcement of the regulations regarding plumbing, where such application shall be made to the inspector of buildings, and shall, at such time and Certain persons to be examined and registered.

place as may be designated by the board of examiners hereinafter provided for, to whom such applications shall be referred, be examined as to his qualifications for such business. On or before the first day of September in the year eighteen hundred and ninety-four every master or employing plumber, and every journeyman plumber, engaged in or working at the business of plumbing in this Commonwealth prior to the tenth day of July in the year eighteen hundred and ninety-three, and desiring to engage in or work at said business in any city or town where licenses for plumbers are required, shall personally register his name and address at the office of the board of health or of the inspector of buildings to whom applications for licenses are to be made in such city or town, and state after being sworn where and how long he has been engaged in or has worked at said business and whether as a master or employing plumber, or as a journeyman plumber. Said board of health or inspector of buildings, if satisfied that the person so registering was actually engaged in or working at said business prior to said date shall thereupon issue to him a certificate, setting forth that he was engaged in or working at the business of plumbing either as a master or employing plumber, or as a journeyman plumber, as the case may be, prior to the tenth day of July in the year eighteen hundred and ninety-three, and authorizing him to engage in or work at said business, either as a master or employing plumber, or as a journeyman plumber. The fee for a certificate for a master or employing plumber shall be two dollars; for a journeyman plumber it shall be fifty cents. Said certificates shall be valid and have force throughout the Commonwealth. In the case of a firm or corporation the examination and licensing of, or the registration of and granting a certificate to, any one member of the firm or the manager of the corporation shall satisfy the requirements of this act.

Authority to engage in the business of plumbing.

Certificates to have force throughout the state.

Acts of 1894, 455, § 3.

There shall be in every city, and in each town of five thousand inhabitants or more, and in each town having a system of water supply or sewerage, a board of examiners of plumbers, consisting of the chairman or such other

Certain officers to constitute boards of examiners.

member of the board of health as said board may designate, and in cities or towns having an inspector of buildings, the inspector or buildings of said city or town, who shall be members ex officio of said board and serve without compensation, and a third member, who shall be a practical plumber of at least five years' continued practical experience either as a master or as a journeyman during the years next preceding the date of appointment. Said third member shall be appointed by the board of health of said city or town within three months from the passage of this act, for the term of one year from the first day of May in the year of appointment, and thereafter annually before the first day of June, and shall be allowed a sum not exceeding five dollars for each day of actual service, to be paid from the treasury of said city or town: *provided*, that if in any city or town there is no inspector of buildings, said board of health shall also appoint the second member of said board of examiners, whose term of office and compensation shall be the same as is heretofore provided for said third member. Proviso.

Acts of 1894, 455, § 4.

Said board of examiners shall, as soon as may be after the appointment of said third member, meet and organize by the selection of a chairman, and shall then designate the times and places for the examination of all applicants desiring to engage in or work at the business of plumbing within their respective jurisdictions. Said board shall examine said applicants as to their practical knowledge of plumbing, house drainage and plumbing ventilation, and shall submit the applicant to some satisfactory form of practical test, and if satisfied of the competency of the applicant shall so certify to the board of health or inspector of buildings in their respective city or town. Said board or inspector shall thereupon issue a license to such applicant, authorizing him to engage in or work at the business of plumbing, either as a master or employing plumber, or as a journeyman plumber. The fee for a license for a master or employing plumber shall be two dollars; for a journeyman plumber it shall be fifty cents. Said licenses shall be valid and have force throughout the Examination of applicants.

Fees for licenses.

Commonwealth, and shall be renewed annually upon a payment of a fee of fifty cents. In case of removal beyond the jurisdiction of the board or inspector issuing the original license it may be renewed by any board having like authority.

Acts of 1894, 455, § 5.

Inspectors of plumbing, appointment, qualifications, etc.

The board of health, or inspector of buildings where such inspector has control of the enforcement of the regulations regarding plumbing, of each city and town mentioned in section three of this act, shall, within three months from the passage of this act, appoint one or more inspectors of plumbing, who shall be practical plumbers of at least five years' continued practical experience, either as masters or as journeymen, during the years next preceding the date of appointment, and who shall hold office until removed by said board or inspector for cause, which must be shown. All such inspectors shall before appointment be subjected to an examination before the civil service commission. The compensation of such inspectors shall be determined by the board or inspector appointing them, subject to the approval of the city council or selectmen, and shall be paid from the treasury of their respective cities or towns. Said inspectors shall inspect all plumbing work for which permits are hereafter granted within their respective jurisdiction, in process of construction, alteration or repair, and shall report to said board or inspector all violations of any law, ordinance, by-law, rule or regulation relating to plumbing work; and also perform such other appropriate duties as may be required. The approval of any plumbing by any other inspectors than those provided for under this act shall not be deemed a compliance with the provisions thereof.

Acts of 1894, 455, § 6.

Additional inspectors, appointment, etc.

No inspector of plumbing in any city or town shall inspect or approve any plumbing work done by himself, or any person by whom he is employed, or who is employed by or with him, but in each city or town subject to the provisions of this act the board of health shall appoint an additional inspector of plumbing, in the same manner and subject to the same qualifications as the

regular inspector of plumbing, whose duty it shall be to inspect, in the manner prescribed in this act, plumbing work done by the regular inspector or any person by whom he is employed, or who is employed by or with him. Said additional inspector shall have authority to act in case of the absence or inability of the regular inspector, and shall receive for his services such compensation as the regular inspector would for a like duty. The provisions of this section shall not apply to any city or town which has heretofore established or may hereafter establish an annual salary for the position of inspector of plumbing, and in any such city or town no inspector of plumbing shall engage in or work at the business of plumbing.

Not to apply to certain cities and towns.

Acts of 1894, 455, § 7.

Each city or town of five thousand inhabitants or more, and every town having a system of water supply or sewerage, shall by ordinance or by-law, within six months from the passage of this act, prescribe rules and regulations for the materials, construction, alteration and inspection of all pipes, tanks, faucets, valves and other fixtures by and through which waste water or sewage is used and carried; and provide that no such pipes, tanks, faucets, valves or other fixtures shall be placed in any building in such city or town except in accordance with plans which shall be approved by the board of health of such city or town, or the inspector of buildings, where such inspector has control of the enforcement of the regulations regarding plumbing; and shall further provide that no plumbing work shall be done, except in the case of repair of leaks, without a permit being first issued therefor, upon such terms and conditions as such cities or towns shall prescribe. But nothing in this section shall prevent boards of health from making such rules and regulations in regard to plumbing and house drainage hitherto authorized by law, which are not inconsistent with any ordinance or by-law made under the authority of this section by the respective cities or towns within which such boards of health have jurisdiction. The provisions of this section shall not apply to the city of Boston or to any officer or board thereof.

Certain cities and towns to prescribe rules and regulations.

Not to apply to Boston.

Acts of 1894, 455, § 8.

Penalties.

Any person violating any provision of this act, or any ordinance, by-law, rule or regulation made thereunder, shall be deemed guilty of a misdemeanor, and be subject to a fine not exceeding fifty dollars for each and every violation thereof, and if such person has received a license under this act his license may be revoked by the board or inspector issuing the same; and if such violation was committed in a city or town other than that where he received his license, the board of health or inspector of buildings having jurisdiction may forbid him to engage in or work at the business of plumbing for a period not exceeding one year in the city or town where the violation was committed. If any person to whom a certificate has been issued under this act violates any provision thereof, or any ordinance, by-law, rule or regulation made thereunder, either the board of health or inspector of buildings issuing his certificate, or the board of health or inspector of buildings having jurisdiction where such violation was committed, may forbid him to engage in or work at the business of plumbing in such city or town for a period not exceeding one year. Any person engaging in or working at the business of plumbing in any city or town where he has been forbidden so to do under this section shall be deemed guilty of a misdemeanor, and be subject to a fine not exceeding one hundred dollars for every such offence. Any city or town mentioned in section three of this act refusing to comply with any of the provisions of this act shall forfeit the sum of fifty dollars to the use of the Commonwealth for every month during which such neglect may continue.

Acts of 1894, 455, § 9.

To apply to persons learning business, etc.

The provisions of this act shall apply to all persons who are now or may be hereafter learning the business of plumbing, when they are sent out to do the work of a journeyman plumber.

Acts of 1894, 455, § 10.

Present inspectors to retain positions.

Any person now holding an appointment as inspector of plumbing may retain his position, and, without further

examination, be deemed to have been appointed under this act.

Acts of 1894, 455, § 11.

Portion of fees may be expended.

The boards of health and inspectors of buildings hereinbefore mentioned may expend such portion of all fees collected by them under this act as shall become necessary to properly perform all duties imposed by the passage of this act. The said boards or inspectors shall annually, before the first day of June, make a full report in detail to their respective cities or towns of all their proceedings during the year under this act.

Annual report.

Acts of 1894, 455, § 12.

This act a continuation of chapter 477, 1893.

All acts or parts of acts inconsistent herewith are hereby repealed. The provisions of this act so far as they are the same as those of chapter four hundred and seventy-seven of the acts of the year eighteen hundred and ninety-three shall be construed as a continuation of that chapter and not as new enactments.

Acts of 1895, 453, § 1.

Chapter 455, 1894, not to be operative till accepted by city or town.

The provisions of chapter four hundred and fifty-five of the acts of the year eighteen hundred and ninety-four shall not be operative in any town until accepted by vote of a majority of the voters of such town present and voting thereon at a town meeting, and the provisions of section seven of said chapter shall not be operative in any city until accepted by vote of its city council.

Acts of 1895, 453, § 2.

Certain territory may be exempt.

Any city may, by vote of its city council, exempt from the provisions of said chapter four hundred and fifty-five any or all of its territory lying outside of the limits of the water supply of such city, or unconnected with a common sewer.

THE REGULATION OF SMOKE NUISANCES.

An act relating to smoke nuisances was passed in 1893, and amended in 1895, but applies only to the city of Boston.

STABLES IN CITIES.

P. S., 102, § 38.

Livery stables in maritime towns.

Whoever occupies or uses a building in a maritime place for a livery stable, except in such part thereof as the mayor and aldermen or selectmen direct, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a longer or shorter time.

P. S., 102, § 39.
Acts of 1890, 395.

Penalty for unauthorized erection or use.

The mayor and aldermen of any city except Boston, and the selectmen of any town, may license suitable persons to keep more than four horses in certain specified buildings or places within their respective cities and towns, and may revoke such license at pleasure. Whoever, not being licensed as aforesaid, occupies or uses any building or place for a stable for more than four horses, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building or place, and in like proportion for a longer or shorter time. And the supreme judicial court, or superior court, or a justice thereof, in term time or vacation, may issue an injunction to prevent such occupancy or use without such license.

Acts of 1891, 220, § 1.

Persons erecting or occupying stables to be licensed.

No person shall hereafter erect, occupy or use any building in any city for a stable for more than four horses unless first licensed so to do by the board of health of said city, and in such case only to the extent so licensed.

Acts of 1891, 220, § 2.

Stables within two hundred feet of houses of worship not to be occupied without consent of society or parish.

No person shall hereafter occupy or use in any city any building for a livery stable or a stable for taking and keeping horses and carriages for hire or to let, within two hundred feet of any church or meeting-house erected and used for the public worship of God, without the consent in writing of the religious society or parish worshipping therein.

Acts of 1891, 220, § 3.

The foregoing provisions shall not be construed to prevent any such occupation and use authorized by law at the time of the passage of this act, to the extent authorized at that time. Limitation.

Acts of 1891, 220, § 4.

Any person violating the provisions of this act shall be punished by a fine of five dollars for each and every day such offence continues, and any court having equity jurisdiction may restrain any such erection, occupation or use contrary to the provisions of this act. Penalty.

On a bill in equity praying that the defendants be enjoined from erecting or causing to be erected a stable, it appeared that they had received from the board of health of the city a license to erect it, granted under the Statutes of 1891, chap. 220, at a public hearing at which the petitioners were represented. The petitioners wished to introduce evidence of what would be the natural and probable effect of the erection and use of the proposed building according to the terms of the license. *Held*, that the statute gave the determination of this question to the board of health, and that the bill should be dismissed with costs.

White *v.* Kenney, 157 Mass. 12.

See also Langmaid *v.* Reed, 159 Mass. 409.

The provisions of Statute of 1891, chap. 220, prohibiting the erection, occupation or use of any building in any city for a stable for more than four horses, unless first licensed so to do by the board of health of the city, are an exercise of the police power of the Commonwealth, and are constitutional, although no provision is made for compensation and no right of appeal is given.

Newton *v.* Joyce, 166 Mass. 83.

Acts of 1895, 213, § 1.
Acts of 1896, 332.

No person shall hereafter erect, occupy or use for a stable any building in any city whose population exceeds twenty-five thousand, unless first licensed so to do by the board of health of said city, and in such case only to the extent so licensed. Regulation of stables in certain cities.

Acts of 1895, 213, § 2.

The foregoing provisions shall not be construed to prevent any such occupation and use which may be authorized by law at the time of the passage of this act, to Occupation of certain buildings not affected.

the extent and by the person or persons so authorized: *provided, however*, that the board of health of any such city may make such regulations or orders respecting the drainage, ventilation, number of animals, and the storage and handling of manure, in any existing stables in their respective cities as in their judgment the public health requires.

Proviso.

Acts of 1895, 213, § 3.

Whoever violates the provisions of this act or of any regulation or order made pursuant thereto, shall be punished by a fine of five dollars for each day such offence continues; and any court having equity jurisdiction may restrain any such erection, occupation or use contrary to the provisions of this act.

Penalty.

Court may restrain.

BAKERIES AND PERSONS EMPLOYED THEREIN.

Acts of 1896, 418, § 1.

All buildings occupied as biscuit, bread or cake bakeries shall be so drained and shall be provided with such a system of plumbing as shall conduce to the proper and healthful condition thereof.

Bakeries to be drained, etc.

Acts of 1896, 418, § 2.

Every room used for the manufacture of flour or meal food products shall have, if deemed necessary by the authority vested with the enforcement of this act, an impermeable floor constructed of cement or of tiles laid in cement, with an additional flooring of wood properly saturated with linseed oil. The side walls and ceilings of such rooms shall be plastered or wainscoted, and, if required by said authority, shall be whitewashed at least once in three months. The furniture and utensils in such rooms shall be so arranged that the furniture and floor may at all times be kept clean and in a proper and healthful sanitary condition.

To have cement or tiled floors.

Walls to be plastered or wainscoted and whitewashed.

Furniture and floor to be clean.

Acts of 1896, 418, § 3.

The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned.

Bread, etc., how kept.

Acts of 1896, 418, § 4.

Every such bakery shall be provided with a proper wash-room and water-closet or closets, with ventilation apart from the bakeroom or rooms where the manufacturing of such food products is conducted; and no water-closet, earth-closet, privy or ashpit shall be within or communicate directly with the bakeroom of any bakery.

Wash-rooms, water-closets, etc., disconnected from bakery.

None to be in direct communication with bakery.

Acts of 1896, 418, § 5.

The sleeping places for the persons employed in a bakery shall be separate from the room or rooms where flour or meal food products are manufactured or stored.

Sleeping places to be separate.

Acts of 1896, 418, § 6.

Any person who violates any of the provisions of this act, or refuses to comply with any requirement of the authority vested with its enforcement, as provided herein, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty nor more than fifty dollars for a first offence, and for a second offence by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment for not more than ten days, and for a third offence by a fine of not less than two hundred and fifty dollars and by imprisonment for not more than thirty days, or by both such fine and imprisonment.

Penalties.

Acts of 1896, 418, § 7.

The owner, agent or lessee of any property affected by the provisions of sections one, two or four of this act shall, within sixty days after service of notice requiring any alterations to be made in or upon such premises, comply therewith. Such notice shall be in writing and may be served upon such owner, agent or lessee, either personally or by mail; and a notice mailed to the last known address of such owner, agent or lessee shall be deemed sufficient for the purpose of this act.

Owner, etc., to comply.

Notice, how served.

Acts of 1896, 418, § 8.

The board of health of a city or town in which a bakery is situated, or in which the business regulated by this act is carried on, shall enforce the provisions of this act and shall cause copies of the same to be printed and posted in all the bakeries and places in which such business is carried on within their respective jurisdictions.

Board of health to enforce act.

GENERAL LAWS

RELATIVE TO

FOOD AND DRUG INSPECTION.

FOOD AND DRUGS.

Acts of 1882, 263, § 1.

Adulteration prohibited.

No person shall within this Commonwealth, manufacture for sale, offer for sale, or sell any drug or article of food which is adulterated within the meaning of this act.

Acts of 1882, 263, § 2.
Acts of 1886, 171.

Definition of terms "drugs" and "food."

The term "drug" as used in this act shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food" as used herein shall include confectionery, condiments and all articles used for food or drink by man.

Acts of 1882, 263, § 3.
Acts of 1884, 289, § 5.
Acts of 1884, 289, § 7.

An article shall be deemed to be adulterated within the meaning of this act, —

Drugs, how adulterated.

(*a.*) In the case of drugs, — (1.) If, when sold under or by a name recognized by the United States Pharmacopœia, it differs from the standard of strength, quality or purity laid down therein, unless the order calls for an article inferior to such standard, or unless such difference is made known or so appears to the purchaser at the time of such sale; (2.) If, when sold under or by a name not recognized in the United States Pharmacopœia but which is found in some other pharmacopœia, or other standard work on *materia medica*, it differs materially from the

Officinal drugs may be sold as called for, or as variation is made known to the purchaser.

standard of strength, quality or purity laid down in such work; (3.) If its strength or purity falls below the professed standard under which it is sold:

Food, how adulterated.

(*b.*) In the case of food, — (1.) If any substance or substances have been mixed with it so as to reduce, or lower, or injuriously affect its quality or strength; (2.) If any inferior or cheaper substance or substances have been substituted wholly or in part for it; (3.) If any valuable constituent has been wholly or in part abstracted from it; (4.) If it is an imitation of, or is sold under the name of, another article; (5.) If it consists wholly or in part of a diseased, decomposed, putrid or rotten animal or vegetable substance, whether manufactured or not, or, in the case of milk, if it is the produce of a diseased animal; (6.) If it is colored, coated, polished or powdered, whereby damage is concealed, or if it is made to appear better or of greater value than it really is; (7.) If it contains any added poisonous ingredient, or any ingredient which may render it injurious to the health of a person consuming it.

Provisions of act not to apply to labelled compounds or mixtures when not injurious to health.

The provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles of food or drinks, provided that the same are not injurious to health, and are distinctly labelled as mixtures or compounds.

No prosecution to be made relative to drugs if standard of same has been raised since the issue of last edition of Pharmacopœia, until such change has been published.

And no prosecutions shall at any time be maintained under said act concerning any drug the standard of strength or purity whereof has been raised since the issue of the last edition of the United States Pharmacopœia, unless and until such change of standard has been published throughout the Commonwealth.

Acts of 1882, 263, § 5.
Acts of 1886, 101, § 4.

State board shall make investigations and may appoint inspectors, analysts and chemists.

The state board of health shall take cognizance of the interests of the public health relating to the sale of drugs and food and the adulteration of the same, and shall make all necessary investigations and inquiries in reference thereto, and for these purposes may appoint inspectors, analysts and chemists, who shall be subject to its supervision and removal.

The board shall make regulations as to col-

Within thirty days after the passage of this act the said board shall adopt such measures as it may deem

lecting and examining food and drugs.

necessary to facilitate the enforcement hereof, and shall prepare rules and regulations with regard to the proper methods of collecting and examining drugs and articles of food.

Acts of 1891, 319, § 1.

The board may expend eleven thousand five hundred dollars annually in carrying out the provisions of this act.

Three-fifths to be expended in relation to milk and its products.

For the purpose of carrying out the provisions of chapter two hundred and sixty-three of the acts of the year eighteen hundred and eighty-two, relating to the adulteration of food and drugs, the state board of health may expend annually a sum not exceeding eleven thousand five hundred dollars: *provided, however*, that not less than three-fifths of said amount shall be annually expended for the enforcement of the laws against the adulteration of milk and milk products.

Acts of 1882, 263, § 6 (see also 1886, 318, § 1).

Samples to be furnished to officers or agents.

Every person offering or exposing for sale, or delivering to a purchaser, any drug or article of food included in the provisions of this act, shall furnish to any analyst or other officer or agent appointed hereunder, who shall apply to him for the purpose and shall tender to him the value of the same, a sample sufficient for the purpose of the analysis of any such drug or article of food which is in his possession.

Acts of 1882, 263, § 7.

Obstruction and its penalty.

Whoever hinders, obstructs, or in any way interferes with any inspector, analyst, or other officer appointed hereunder, in the performance of his duty, and whoever violates any of the provisions of this act, shall be punished by a fine not exceeding fifty dollars for the first offence, and not exceeding one hundred dollars for each subsequent offence.

Acts of 1884, 289, § 2.
Acts of 1886, 101, § 4.

State board to report prosecutions and money expended.

The state board of health shall report annually to the legislature the number of prosecutions made under chapter two hundred and sixty-three of the acts of eighteen hundred and eighty-two, and an itemized account of all money expended in carrying out the provisions thereof.

Acts of 1884, 289, § 3.
Acts of 1885, 352, § 5.

Powers of inspectors.

An inspector appointed under the provisions of said chapter two hundred and sixty-three of the acts of the year eighteen hundred and eighty-two shall have the same powers and authority conferred upon a city or town inspector by section two of chapter fifty-seven of the Public Statutes. [As amended by section 4 of chapter 352 of the Acts of 1885:] They shall also have the power and authority conferred upon inspectors of milk by section twenty of chapter fifty-six of the Public Statutes. [*See also* 1886, 318, § 1.]

Acts of 1884, 289, § 4.

Act of 1882 does not affect chapter 57 of the P. S.

Nothing contained in chapter two hundred and sixty-three of the acts of the year eighteen hundred and eighty-two shall be in any way construed as repealing or amending anything contained in chapter fifty-seven of the Public Statutes.

Acts of 1884, 289, § 8.

Samples to be sealed for benefit of defendant.

Before commencing the analysis of any sample the person making the same shall reserve a portion which shall be sealed; and in case of a complaint against any person the reserved portion of the sample alleged to be adulterated shall upon application be delivered to the defendant or his attorney.

P. S., 208, § 1.

Selling corrupt or unwholesome provisions without notice.

Whoever knowingly sells any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding two hundred dollars.

1784

The gist of the offence under this section consists in the guilty knowledge or evil intent of a party in selling what he knows to be unfit for food. The sale, of itself, is not made criminal; but it is the sale coupled with the knowledge of the diseased state of the thing sold which constitutes the offence.

Commonwealth *v.* Boynton, 12 Cush. 499.

P. S., 208, § 3.

Adulterating food.

Whoever fraudulently adulterates, for the purpose of sale, bread or any other substance intended for food, with any substance injurious to health, or knowingly barters, gives away, sells, or has in possession with intent to sell, any substance intended for food, which has been adulterated with any substance injurious to health, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding three hundred dollars; and the articles so adulterated shall be forfeited, and destroyed under the direction of the court.

An indictment under the Gen. Sts., chap. 166, sect. 8, which charges the defendant with unlawfully and fraudulently adulterating "a certain substance intended for food, to wit, one pound of confectionery," does not sufficiently describe the substance alleged to have been adulterated, and, if seasonably objected to for that cause, must be quashed.

Commonwealth *v.* Chase, 125 Mass. 202.

P. S., 208, § 4.

Adulterating liquor used for drink with Indian cockle, etc.

Whoever adulterates, for the purpose of sale, any liquor used or intended for drink, with Indian cockle, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel-water, logwood, Brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison not exceeding three years; and the articles so adulterated shall be forfeited.

Acts of 1896, 272.

Liquors sold must be of good standard quality.

Section nine of chapter one hundred of the Public Statutes is hereby amended by striking out all of the third clause and inserting in place thereof the following: — Third, That no spirituous or intoxicating liquor shall be sold, exchanged or delivered, or exposed, offered or kept for sale, exchange or delivery, upon the premises described in any license, except such as is of good standard quality, and such as is free from any adulteration prohibited in the Pharmacopœia of the United States, and under the several acts relating to adulteration of

food and drugs, for either a food or a drug. And if marked, labeled, or represented as being the product of any foreign country it shall also be of the standard quality required for its legal sale for domestic use in the country of its reputed production. All such liquors as are sold, exchanged or delivered, or which are exposed or kept for sale, exchange or delivery, under a license of the sixth class, shall be of the quality required for their sale as drugs under the provision of the acts relating to the adulteration of food and drugs.

Foreign liquors to be of the quality required in country where produced.

Acts of 1896, 397, § 19.

Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by imprisonment in jail not exceeding one year, or by fine not exceeding four hundred dollars; and such adulterated drugs and medicines shall be forfeited, and destroyed under the direction of the court.

Adulteration of drugs or medicines.

1853

Acts of 1896, 397, § 20.

Whoever sells arsenic (arsenious acid), atropia or any of its salts, chloral hydrate, chloroform, cotton root and its fluid extract, corrosive sublimate, cyanide of potassium, Donovan's solution, ergot and its fluid extract, Fowler's solution, laudanum, McMunn's elixir, morphia or any of its salts, oil of pennyroyal, oil of savin, oil of tansy, opium, Paris green, Parsons' vermin exterminator, phosphorus, prussic acid, "rough on rats," strychnia or any of its salts, tartar emetic, tincture of aconite, tincture of belladonna, tincture of digitalis, tincture of nux vomica, tincture of veratrum viride, without the written prescription of a physician, shall keep a record of such sale, the name and amount of the article sold, and the name and residence of the person or persons to whom it was delivered, which record shall be made before the article is delivered, and shall at all times be open to inspection by the officers of the district police and by the police authorities and officers of cities and towns. Whoever neglects to keep or refuses to show to said officers such record shall be punished by fine not

Persons selling certain poisons to keep records, etc.

Penalty for neglect or refusal to show record.

Poison label to be attached, and name of antidote.

exceeding fifty dollars. Whoever sells any of the poisonous articles named in this section, without the written prescription of a physician, shall affix to the bottle, box or wrapper containing the article sold a label of red paper upon which shall be printed in large black letters the word — Poison, and also the word — Antidote, and the name and place of business of the vendor. The name of an antidote, if there be any, for the poison sold shall also be upon the label. Every neglect to affix such label to such poisonous article before the delivery thereof to the purchaser shall be punished by fine not exceeding fifty dollars. Whoever purchases poison as aforesaid and gives a false or fictitious name to the vendor shall be punished by fine not exceeding fifty dollars: *provided*, that nothing in this act shall be construed to apply to wholesale dealers and to manufacturing chemists in their sales to the retail trade.

Penalties.

Acts of 1896, 397, § 23.

Poison act not to apply in certain cases.

This act [chapter 397 of the Acts of 1896] shall not apply to physicians putting up their own prescriptions or dispensing medicines to their patients; nor to the sale of drugs, medicines, chemicals or poisons at wholesale only; nor to the manufacture or sale of patent and proprietary medicines; nor to the sale of non-poisonous domestic remedies usually sold by grocers and others; nor shall any member of a copartnership, other than a registered pharmacist, be liable to the penalties hereof: *provided*, that such non-registered member shall not retail, compound for sale or dispense for medicinal purposes, drugs, medicines, chemicals or poisons, except under the personal supervision of a registered pharmacist.

Proviso.

Acts of 1891, 374, § 1.

Sale of children's toys or confectionery containing arsenic forbidden.

Whoever by himself or by his servant or agent, or as the servant or agent of any other person, manufactures, sells or exchanges, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, any children's toys or confectionery, containing or coated wholly or in part with arsenic, shall be punished by fine of not less than fifty nor more than one hundred dollars.

Acts of 1891, 374, § 3.

Samples to be furnished to inspectors and others for analysis.

Every person offering or exposing for sale or exchange any paper, fabric or other article shall furnish a sample thereof sufficient for the purpose of analysis, where such sample can be obtained without damage to the remaining portion, to any inspector, chemist or other agent or officer employed by the state board of health, who shall apply to him therefor for that purpose and who shall tender him the value of the same. Whoever violates the provisions of this section shall be punished as provided in section one of this act.

Acts of 1891, 333, § 1.

Sale of candy containing alcohol regulated.

No person shall sell to any child under sixteen years of age any candy or other article, inclosing liquid or syrup containing more than one per centum of alcohol.

Acts of 1891, 333, § 2.

Penalty.

All persons violating the provisions of this act shall be punished by a fine of not less than fifty nor more than one hundred dollars.

Acts of 1886, 72, § 1.

Sale of tobacco, etc., to persons under sixteen.

No person shall sell any cigarette, snuff or tobacco in any of its forms to any person under sixteen years of age.

Acts of 1886, 72, § 2.

Gift of tobacco to minors.

No person other than the minor's parent or guardian shall give any cigarette, snuff or tobacco in any of its forms to any minor under sixteen years of age.

Acts of 1886, 72, § 3.

Penalty.

Any person violating any of the provisions of this act shall be punished by a fine not exceeding fifty dollars.

LAWS

RELATIVE TO

SPECIAL ARTICLES OF FOOD.

[The older statutes relative to the weights and measures of sundry articles, and the local inspection of the same, containing much material pertaining to commercial inspection, and irrelevant to the subject of adulteration, are omitted, with the exception of the statutes relative to milk and provisions and animals intended for slaughter.]

OF THE INSPECTION AND SALE OF MILK AND MILK PRODUCTS.

P. S., 57, § 1.

Appointment of inspectors of milk.

1864

The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more persons to be inspectors of milk for their respective places, who shall be sworn before entering upon the duties of their office. Each inspector shall publish a notice of his appointment for two weeks in a newspaper published in his city or town, or, if no newspaper is published therein, he shall post up such notice in two or more public places in such city or town.

P. S., 57, § 2.
Acts of 1885, 352, § 4.
Acts of 1886, 318, § 1.

Their duties and powers.

1864

Such inspectors shall keep an office, and shall record in books kept for the purpose the names and places of business of all persons engaged in the sale of milk within their city or town. Said inspectors may, with the approval of the mayor or the selectmen, employ suitable persons to act as collectors of samples, who shall be sworn before entering upon their duties. Said inspectors, or the collectors employed and qualified as aforesaid, may enter all places where milk is stored or kept for sale, and all carriages used for the conveyance of milk, and the

said inspectors or the collectors may take samples for analysis from all such places or carriages, and at the same time a portion of each sample so taken shall, if the person taking the same be requested so to do, be sealed and delivered to the owner or person from whose possession the same is taken and a receipt given therefor to the person taking the same. The inspectors shall cause the samples of milk so taken to be analyzed or otherwise satisfactorily tested, the results of which analysis or test they shall record and preserve as evidence. The inspectors shall receive such compensation as the mayor and aldermen or selectmen may determine.

Pub. Stats., chap. 57, sect. 2 (Statute of 1864, chap. 122, sect. 2), so far as it authorizes inspectors of milk to enter all carriages used in the conveyance of milk, and, whenever they have reason to believe any milk found therein is adulterated, to take specimens thereof for the purpose of analyzing or otherwise satisfactorily testing the same, is constitutional.

Commonwealth *v.* Carter, 132 Mass. 12.

Placing wax upon the top of the cork in a bottle containing a portion reserved from a sample of milk taken for analysis, and not extending the wax over the mouth of the bottle and thus rendering the bottle air-tight, is not a sufficient compliance with the requirements of the Statutes of 1884, chap. 310, sect. 4, that such reserved portion shall be "sealed."

Commonwealth *v.* Lockhardt, 144 Mass. 132.

Acts of 1886, 318, § 3.

No evidence of analysis to be received if inspector neglects to deliver sample.

If the said inspector or collector after being so requested shall refuse or neglect to seal and deliver to the owner or person from whose possession the same is taken, as provided in section one of this act, a portion of the sample taken as aforesaid, no evidence shall be received in any court of the results of the analysis or test of the same, which may have been recorded and preserved as aforesaid.

The fact that a collector of samples of milk, who was not acting under the authority of the Statute of 1886, chap. 318, made a purchase of milk in a restaurant and retained a portion thereof for analysis without disclosing that he was such a collector, and without giving to the person from whom it was purchased an opportunity to ask for a sealed sample, will not render evidence incompetent to show that the milk so purchased was below the legal standard.

Commonwealth *v.* Coleman, 157 Mass. 460.

Acts of 1886, 318, § 4.
Acts of 1896, 398, § 3.

Penalty for imitating seal or tampering with sample.

Whoever makes, causes to be made, uses or has in his possession any imitation or counterfeit of any seal used by any inspector of milk, collector of samples or other official engaged in the inspection of milk, and whoever changes or in any way tampers with any sample taken or sealed as provided in section two, shall be punished by a fine of not less than one hundred dollars and by imprisonment in the house of correction not less than three nor more than six months.

P. S., 57, § 3.

Persons selling milk from carriages to be licensed.

1880

In all cities, and in all towns in which there is an inspector of milk, every person who conveys milk in carriages or otherwise for the purpose of selling the same in such city or town shall annually, on the first day of May, or within thirty days thereafter, be licensed by the inspector or inspectors of milk of such city or town to sell milk within the limits thereof, and shall pay to such inspector or inspectors fifty cents each to the use of the city or town. The inspector or inspectors shall pay over monthly to the treasurer of such city or town all sums collected by him or them. Licenses shall be issued only in the names of the owners of carriages or other vehicles, and shall for the purposes of this chapter be conclusive evidence of ownership. No license shall be sold, assigned, or transferred. Each license shall record the name, residence, place of business, number of carriages or other vehicles used, name and residence of every driver or other person engaged in carrying or selling said milk, and the number of the license. Each licensee shall before engaging in the sale of milk cause his name, the number of his license, and his place of business to be legibly placed on each outer side of all carriages or vehicles used by him in the conveyance and sale of milk, and he shall report to the inspector or inspectors any change of driver or other person employed by him which may occur during the term of his license. Whoever, without being first licensed under the provisions of this section, sells milk or exposes it for sale from carriages

or other vehicles, or has it in his custody or possession with intent so to sell and whoever violates any of the provisions of this section, shall for a first offence be punished by fine of not less than thirty nor more than one hundred dollars; for a second offence by fine of not less than fifty nor more than three hundred dollars; and for a subsequent offence by fine of fifty dollars and by imprisonment in the house of correction for not less than thirty nor more than sixty days.

P. S., 57, § 4.

Persons selling milk in stores, etc., to be registered.
1880

Every person before selling milk or offering it for sale in a store, booth, stand or market-place in a city or in a town in which an inspector or inspectors of milk are appointed, shall register in the books of such inspector or inspectors, and shall pay to him or them fifty cents to the use of such city or town; and whoever neglects so to register shall be punished for each offence by fine not exceeding twenty dollars.

P. S., 57, § 5.
Acts of 1886, 318, § 2.

Penalty for selling, etc., adulterated milk.
1880

Whoever, by himself or by his servant or agent, or as the servant or agent of any other person, sells, exchanges or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, adulterated milk, or milk to which water or any foreign substance has been added, or milk produced from cows fed on the refuse of distilleries, or from sick or diseased cows, or milk not of good standard quality, shall, for a first offence, be punished by fine of not less than fifty nor more than two hundred dollars; for a second offence, by fine of not less than one hundred nor more than three hundred dollars, or by imprisonment in the house of correction for not less than thirty nor more than sixty days, and, for a subsequent offence, by fine of fifty dollars and by imprisonment in the house of correction for not less than sixty nor more than ninety days.

An indictment which alleges that the defendant "did unlawfully keep, offer for sale and sell" adulterated milk charges but one offence.

In support of such indictment, one, who in a great many instances has used a lactometer for the purpose of testing the quality and the purity of milk, may testify to the result of an experiment made by him with the same lactometer upon the milk in question, although no evidence is offered as to the character of the instrument.

Commonwealth *v.* Nichols, 10 Allen, 199.

At the trial of an indictment on Pub. Stats., chap. 57, sect. 5 (Statute of 1868, chap. 263), for selling adulterated milk, there was evidence that the defendant [who was a son of the owner of a milk route], with a companion who was in the same employment with himself, knowingly adulterated milk on its way for distribution to his father's customers, and then, having charge, with his companion, of its distribution from the wagon on which it was conveyed upon the route, caused a can of it to be delivered to one of the customers by the hand of his companion. *Held*, that he had no ground of exception to instructions to the jury, that, in the absence of proof of any previous contract to supply milk to the customer, the delivery might be deemed an act of sale; nor to an instruction framed on a supposition that the jury might find that he was in the employment of his father, although there was no averment in the indictment to that effect.

Commonwealth *v.* Haynes, 107 Mass. 194.

A person may be convicted of selling adulterated milk upon a complaint under Pub. Stats., chap. 57, sect. 5 (Statute of 1880, chap. 209, sect. 3), without allegation or proof that he knew it to be adulterated.

Commonwealth *v.* Evans, 132 Mass. 11.

A complaint under Pub. Stats., chap. 57, sect. 5, alleging that the defendant, at a time and place named, had in his possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient, without further alleging that the milk was analyzed, and found on analysis to contain less than thirteen per cent. of milk solids. At the trial of a complaint under Pub. Stats., chap. 57, sect. 5, alleging that the defendant had in his possession adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent to sell the same, it is immaterial in what manner the quantity of milk solids has been reduced below thirteen per cent., if the intent is to sell the milk as pure milk, and not as skimmed milk.

Commonwealth *v.* Bowers, 140 Mass. 483.

A complaint, under the Pub. Stats., chap. 57, sect. 5, alleging, in one count, that the defendant, at a time and place named, sold a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, and in another count alleging that the defendant, at the same time and

place, had in his possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient, without further alleging that the milk was analyzed, and found, on analysis, to contain less than thirteen per cent. of milk solids.

The Pub. Stats., chap. 57, sect. 10, do not prohibit any person not an inspector of milk from making a complaint for a violation of the provisions of the chapter.

A complaint, under the Pub. Stats., chap. 57, sect. 5, alleging that the defendant sold one pint of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, is not supported by the proof that he sold the milk as skimmed milk out of a tank marked as required by sect. 7, although the milk was watered.

A complaint under the Pub. Stats., chap. 57, sect. 5, alleging a sale of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, is supported by proof of a sale of milk, which, by the removal of a part of the cream, has been reduced to solids below thirteen per cent., unless the milk was sold as skimmed milk, and out of a vessel, can, or package marked as required by sect. 7; and it is not necessary that a complaint charging such offence should be drawn under sect. 6.

At the trial of a complaint, under the Pub. Stats., chap. 57 sect. 5, alleging, in the first count, a sale by the defendant, at a time and place named, of adulterated milk, and, in the second count, the having in his possession, at the same time and place, such milk, with intent unlawfully to sell the same, the defendant asked the judge to rule, that, "if the jury find, on the evidence, that there was a consummated sale, they cannot convict under the second count." The judge declined so to rule, and, after instructing the jury as to what would authorize a conviction on the first count, instructed them that, "if they should further find that the defendant kept the same milk with intent to sell it, they would be authorized to return a verdict of guilty on the second count." *Held*, that the defendant had no ground for exception.

Commonwealth *v.* Tobias, 141 Mass. 129.

At the trial of a complaint, under the Pub. Stats., chap. 57, sect. 5, alleging that the defendant had in his possession adulterated milk, with intent unlawfully to sell the same, the evidence showed that a wagon with the defendant's name and a number on it was standing upon a public street in a city at an early hour of the morning; that the defendant's servant was on the wagon, and there were several eight-quart cans in the wagon; that a collector of samples in the employ of the inspector of milk for the city took a sample of milk from one of the cans, which was not marked "skimmed milk;" and that an analysis of the milk taken showed that it was below the legal standard. *Held*, that

there was evidence of an intent on the part of the defendant to sell the milk, which was properly submitted to the jury.

Commonwealth *v.* Smith, 143 Mass. 169.

At the trial of an indictment on the Pub. Stats., chap. 57, sect. 5, charging the defendant with having adulterated milk in his possession, with intent unlawfully to sell the same, an analyst in the employ of the inspector of milk may testify to the result of his analysis of the milk taken from the defendant from memory, using a memorandum made by him at the time of analysis to refresh his memory, without further proof that the requirements of the Pub. Stats., chap. 57, sect. 2, as amended by the Statutes of 1884, chap. 310, sect. 3, having been complied with.

At the trial of an indictment on the Pub. Stats., chap 57, sect. 5, charging the defendant with having adulterated milk in his possession with intent unlawfully to sell the same, an analyst in the employ of the inspector of milk, who analyzed the milk taken from the defendant, testified that he reserved a portion of the milk so taken by putting it into a bottle, which he corked and sealed. A chemist to whom the analyst delivered a portion of the milk so reserved, testified, for the defendant, that the bottle was not sealed. The defendant asked the judge to rule that, if the bottle was corked only, it was not a compliance with the Statutes of 1884, chap. 310, sect. 4, as to the sealing of such reserved portion. The judge declined so to rule, and instructed the jury that they might consider the evidence as bearing upon the credibility of the government witness. *Held*, that the defendant had no ground for exception.

If at a trial of an indictment on the Pub. Stats., chap. 57, sect. 5, charging the defendant with having adulterated milk in his possession, with intent unlawfully to sell the same, an analyst in the employ of the inspector of milk of a city testifies that he added, for the preserving it, a few drops of carbolic acid to the sample reserved from milk delivered to him for analysis, it is a question of fact for the jury whether the reservation of the sample was in accordance with the requirement of the Statutes of 1884, chap. 310, sect. 4.

Commonwealth *v.* Spear, 143 Mass. 172.

A complaint on the Statutes of 1886, chap. 318, sect. 2, alleging that, on the first day of July, 1886, the defendant had in his possession "one pint of milk not of standard quality, that is to say, milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same within this Commonwealth," is sufficient, without negativing the exception of the months of May and June.

The Statutes of 1885, chap. 352, sect. 6, provide that sect. 9 of the Pub. Stats., chap. 57 (which relates to the sale of adulterated milk), "Is hereby amended so as to read as follows." In each section, after the words quoted, there follows a sentence which

covers the whole subject of the original section. *Held*, that the Statutes of 1886, chap. 318, sect. 2, was a valid enactment.

The Statutes of 1884, chap. 310, sect. 4, providing for the reservation and sealing, before commencing the analysis, of a portion of the sample of milk taken for analysis, is impliedly repealed by the Statutes of 1886, chap. 318, sects. 1, 3.

Commonwealth *v.* Kenneson, 143 Mass. 418.

The Statute of 1885, chap. 352, sect, 8, provides that no person shall sell, or have in his possession with intent to sell, skimmed milk below a certain standard, and enacts that whoever violates the provisions of this section shall be punished by the penalties provided in the Pub. Stats., chap. 57, sect. 5. *Held*, on a complaint, made under the Statutes of 1885, chap. 352, sect. 8, for an offence committed after the Statutes of 1886, chap. 318, 2, took effect, that even if the last-named statute repealed by implication the Pub. Stats., chap. 57, sect. 5, the complaint could be maintained.

Commonwealth *v.* Kendall, 144 Mass. 357.

On a complaint for the sale of milk not of good standard quality, evidence that the milk was delivered under a special contract is immaterial.

If a buyer of milk takes a portion to a milk inspector, the latter may testify on the trial of such a complaint as to the results of his analysis.

Commonwealth *v.* Holt, 146 Mass. 38.

An averment in a complaint under the milk acts, that the defendants were "partners," is mere surplusage, and need not be proved.

On such a complaint, evidence that the defendant was on a wagon with a license number on it, and containing milk cans, from one of which was taken adulterated milk, is competent on the issue that he was in possession of the milk to sell it.

Commonwealth *v.* Rowell, 146 Mass. 128.

A motion to quash an indictment because it "sets forth no crime or offence known to the law," made after the impanelling of the jury, is filed too late; nor does it assign "specifically the objection relied on," within the Pub. Stats., chap. 214, sect. 25.

An indictment on the Statutes of 1886, chap. 318, sect. 2, alleging that the defendant had in his "possession milk to which a certain foreign substance had been added, to wit, annotto coloring matter," with intent unlawfully to sell the same, is sufficient without naming the quantity.

Evidence offered at the trial of such an indictment as to two samples of milk, taken from the defendant's possession at substantially the same time, is competent, and the government cannot be required at the time of the offer, if ever, to elect which sample it will rely on.

The addition of annotto coloring matter, whether injurious to health or not, is punishable under the statute.

Evidence that the milk was of low grade is competent, although it may tend to prove another offence.

Commonwealth *v.* Schaffner, 146 Mass. 512.

Complaint under the Pub. Stats., chap. 57, sect. 5, as amended by the Statutes of 1886, chap. 318, sect. 2, to the municipal court of the Charlestown district in the city of Boston, alleging that the defendant, on March 27, 1890, "did have in his possession milk to which a foreign substance had been added, to wit, annotto coloring matter," with intent unlawfully to sell the same.

Under the Pub. Stats., chap. 57, sect. 5, as amended by the Statutes of 1886, chap. 318, sect. 2, relating to the adulteration of "milk," it is an offence to have in one's possession skimmed milk containing a foreign substance with intent unlawfully to sell the same.

Commonwealth *v.* Wetherbee, 153 Mass. 159.

A hotel-keeper, who sells milk to his guests to be drunk by them on his premises, may be convicted of an offence under the Statute of 1886, chap. 318, sect 2, if the milk so sold is not of the required standard of quality.

If a sale of milk, which is not of the required standard of quality, is made by a hotel-keeper's servant, in the ordinary course of his employment, to a guest to be drunk on the premises, the hotel-keeper will be responsible therefor, under the Statute of 1886, chap. 318, sect. 2, though he was not present and did not consent to or know of the particular sale.

Commonwealth *v.* Vieth, 155 Mass. 442.

A complaint under Pub. Stats., chap. 57, sect. 5, charging the defendant with having in his possession, with intent to sell, milk to which a foreign substance had been added, is sustained by proof of possession, with that intent, of cream to which boracic acid had been added.

A complaint under Pub. Stats., chap. 57, sect. 5, charging the defendant with having in his possession, with intent to sell, milk to which a foreign substance had been added, was heard on an "agreed statement of facts," which was not a case stated in writing and filed, but an admission of facts from which the jury were at liberty to draw inferences. *Held*, that the jury might infer the offence charged from a sale by the defendant from his restaurant.

Commonwealth *v.* Gordon, 159 Mass. 8.

A person may be convicted of violating Statute of 1886, chap. 318, sect. 2, whose servant in the course of his employment makes an inadvertent sale of milk "not of good standard quality."

If milk is ordered by and delivered to a customer in a hotel as a part of his breakfast, for which he pays a round sum, it is a sale of the milk which, if the milk is "not of good standard

quality," will support a complaint on Statute of 1886, chap. 318, sect. 2.

Commonwealth *v.* Warren, 160 Mass. 583.

A master may be convicted, under Statute of 1886, chap, 318. sect. 2, of having in his custody and possession milk not of the required standard of quality, if in the custody and possession of a servant, in the ordinary course of his employment, and the general law governing the responsibility of a master for the acts of his servant in such cases was not intended to be affected by Statute of 1894, chap. 425.

Commonwealth *v.* Proctor, 165 Mass. 38.

P. S., 57, § 6.

Penalty for selling milk from which cream has been removed.

Whoever, by himself or by his servant, or as the servant or agent of any other person, sells, exchanges, or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale as pure milk, any milk from which the cream or a part thereof has been removed, shall be punished by the penalties provided in the preceding section.

P. S., 57, § 7.
Acts of 1896, 398, § 1.

Vessels containing milk from which cream has been removed to be marked "skimmed milk."

No person, by himself or his agents, shall sell, exchange or deliver, or have in his custody or possession, with intent to sell, exchange or deliver, milk from which the cream or any part thereof has been removed, unless in a conspicuous place upon every vessel, can or package of more than two quarts capacity from or in which such milk is sold, exchanged or delivered, the words "Skimmed Milk", are distinctly marked in plain uncondensed gothic letters not less than one inch in length, said marking to be in dark letters on a light ground, and to be on the vessel, can or package itself and not upon a detachable label or tag; and unless in a conspicuous place upon every vessel, can or package of two quarts or less capacity from or in which such milk is sold, exchanged or delivered, the words "Skimmed Milk", are distinctly marked in plain uncondensed Gothic letters, said marking to be in dark letters on a light ground, and to be either on the vessel, can or package itself or upon a detachable label or tag. Whoever violates the provisions of this section shall be punished by the penalties provided in section five.

Penalty.

Acts of 1885, 352, § 8.

Standard of skimmed milk and penalty for violation.

No person shall sell, exchange or deliver, or have in his custody or possession with intent to sell, exchange or deliver, skimmed milk containing less than nine and three-tenths per cent. of milk solids exclusive of fat. Whoever violates the provisions of this section shall be punished by the penalties provided in section five of chapter fifty-seven of the Public Statutes.

See Commonwealth *v.* Kendall, 144 Mass. 357, p. 137.

Acts of 1896, 264, § 1.

Condensed milk to be properly labeled.

No person shall sell or offer for sale or exchange in hermetically sealed cans any condensed milk or condensed skim milk, unless in cans which are distinctly labeled with the name of the person or company manufacturing said condensed milk or skim milk, the brand under which it is made, and the contents of the can.

Acts of 1896, 264, § 2.

To be labeled when not hermetically sealed.

Condensed milk sold from cans or packages not hermetically sealed shall be branded or labeled with the name of the manufacturer.

Acts of 1896, 264, § 3.

Penalty.

Any person violating the provisions of this act shall be subject to the same penalties as for the adulteration of milk.

P. S., 57, § 8.
Acts of 1884, 310, § 5.

Penalty on inspectors, etc., for conniving, etc.

Any inspector of milk, and any servant or agent of an inspector, who wilfully connives at or assists in a violation of the provisions of this chapter, and whoever hinders, obstructs, or in any way interferes with any inspector of milk, or any servant or agent of an inspector, in the performance of his duty, shall be punished by fine of not less than one hundred nor more than three hundred dollars, or by imprisonment for not less than thirty nor more than sixty days.

P. S., 57, § 9.
Acts of 1885, 352, § 6.
Acts of 1886, 318, § 2.
Acts of 1896, 398, § 2.

Standard of milk.

In all prosecutions under this chapter, if the milk is shown upon analysis to contain less than thirteen per cent.

of milk solids, or to contain less than nine and three tenths per cent. of milk solids exclusive of fat, or to contain less than three and seven tenths per cent. of fat, it shall be deemed for the purposes of this act to be not of good standard quality, except during the months of April, May, June, July and August, when milk containing less than twelve per cent. of milk solids, or less than nine per cent. of milk solids exclusive of fat, or less than three per cent. of fat, shall be deemed to be not of good standard quality.

Standard in certain months.

Pub. Stats., chap. 57, sect. 9 (Statute of 1880, chap. 209, sect. 7), providing that "in all prosecutions under this act," for selling adulterated milk, "if the milk shall be shown upon analysis to contain more than eighty-seven per centum of watery fluid or to contain less than thirteen per centum of milk solids, it shall be deemed for the purposes of this act to be adulterated," is constitutional.

Commonwealth *v.* Evans, 132 Mass. 11.

A complaint under the Pub. Stats., chap. 57, sects. 5, 9, alleging that the defendant, at a time and place named, had in his custody and possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk then and there containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient.

Commonwealth *v.* Keenan, 139 Mass. 193.

P. S., 57, § 10.

Inspectors to institute complaints.

It shall be the duty of every inspector to institute a complaint for a violation of any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to sustain such complaint.

P. S., 57, § 11.

Names, etc., of persons convicted to be published.

Each inspector shall cause the name and place of business of every person convicted of selling adulterated milk, or of having the same in his possession with intent to sell, to be published in two newspapers in the county in which the offence was committed.

Acts of 1885, 352, § 5.

Powers of inspectors under chap. 263 of Acts of 1882.

Inspectors appointed under the provisions of chapter two hundred and sixty-three of the acts of the year eighteen hundred and eighty-two shall have the power and authority conferred upon a city or town inspector by *sec-*

tion two of chapter fifty-seven of the Public Statutes as amended by section one of chapter three hundred and eighteen of the acts of eighteen hundred and eighty-six. They shall also have the power and authority conferred upon inspectors of milk by section twenty of chapter fifty-six of the Public Statutes.

Acts of 1885, 149, § 1.

Lower courts may try milk cases.

Municipal, district and police courts and trial justices shall, in their respective counties, concurrently with the superior court, have jurisdiction of cases arising under the provisions of chapter fifty-seven of the Public Statutes relating to the inspection and sale of milk, and may impose the same penalties for any violation of the provisions of said chapter as therein provided.

Acts of 1894, 425.

Producers exempt from prosecution, when.

No producer of milk shall be liable to prosecution on the ground that the milk produced by him is not of good standard quality, unless the milk alleged not to be of such quality was taken upon the premises, or while in the possession or under the control of the producer by an inspector of milk, or by the agents of the dairy bureau or state board of health, or collector of samples duly authorized by such inspector, and a sealed sample of the same given to the producer.

BUTTER, IMITATION BUTTER AND CHEESE.

P. S., 56, § 17.
Acts of 1884, 310, § 1.
Acts of 1886, 317, § 1.

Spurious butter to be marked.

Whoever, by himself or his agents, sells, exposes for sale, or has in his possession with intent to sell, any article, substance or compound, made in imitation or semblance of butter or as a substitute for butter, and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, shall have the words "imitation butter," or if such substitute is the compound known as oleomargarine, then the word "oleomargarine," or if it is known

as butterine, then the word "butterine," stamped, labelled or marked in a straight line in printed letters of plain, uncondensed Gothic type, not less than one-half inch in length, so that said words cannot be easily defaced, upon the top, side and bottom of every tub, firkin, box or package containing any of said article, substance or compound. The said stamp, label or mark shall contain no other words. And whoever, by himself or his agents, exposes or offers for sale any of the said article, substance or compound not in the original package, shall attach to the said article, substance or compound, in a conspicuous place, a label bearing the words "imitation butter," "oleomargarine," or "butterine," as the article may be, in printed letters of plain, uncondensed Gothic type, not less than one-half inch in length. And in cases of retail sales of any of said article, substance or compound not in the original packages, the seller shall, by himself or his agents, attach to each package so sold, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "imitation butter," "oleomargarine," or "butterine," and no other words, in printed letters in a straight line of plain, uncondensed Gothic type, not less than one-half inch in length.

Retail packages to be marked.

Oleomargarine was exposed for sale in the original package, namely, a tub, the top of the cover of which had been duly marked, as well as the side and bottom, but from which the cover had been removed, disclosing the superficial surface of the oleomargarine without any mark. *Held*, that the terms of the Statutes of 1886, chap. 317, sect. 1, had been complied with.

Commonwealth *v.* Bean, 148 Mass. 172.

A complaint on the Statutes of 1886, chap. 317, sect. 1, charging the defendant with selling imitation butter at retail without a descriptive wrapper, need not allege that the sale was actually made by the defendant's agent.

Commonwealth *v.* Gray, 150 Mass. 327.

If a complaint charges a person with having in his possession, with intent to sell, oleomargarine in a tub not marked as required by law, he cannot be convicted, if the exceptions show that he had no intent to sell it without having it so marked.

It is not to be inferred that the legislature, merely by making it the duty of certain officers to enforce penal laws of general application, intended that the enforcement should be dependent

upon these officers; and a complaint charging a person with having in his possession, with intent to sell, oleomargarine contrary to the requirements of the Statutes of 1886, chap. 317, sect. 1, is not defective because made by an inspector of the state board of health, instead of by an inspector of milk or by the treasurer of the town in which the offence was committed.

Commonwealth *v.* McDonnell, 157 Mass. 407.

The following decision has reference to the sale of oleomargarine by hawkers and pedlers: —

Oleomargarine and butterine are "provisions," within the meaning of the Pub. Stats., chap. 68, sect. 1; and a complaint on sect. 16, for going about carrying and exposing them for sale without a license, cannot be sustained.

Where a bill of exceptions was inartificially drawn, this court construed it as intended to raise the question which the court decided.

Commonwealth *v.* Lutton, 157 Mass. 392.

P. S., 56, § 18.
Acts of 1885, 352, § 2.

Spurious cheese to be plainly marked as such.

Whoever, by himself or his agents, sells, exposes for sale, or has in his possession with intent to sell, any article, substance or compound made in imitation or semblance of cheese, or as a substitute for cheese, and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, shall have the words "imitation cheese," stamped, labelled or marked, in printed letters of plain, uncondensed Gothic type, not less than one inch in length, so that said words cannot be easily defaced, upon the side of every cheese cloth or band around the same, and upon the top and side of every tub, firkin, box or package containing any of said article, substance or compound. And in case of retail sales of any of said article, substance or compound not in the original packages, the seller shall, by himself or his agents, attach to each package so sold at retail, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "imitation cheese," in printed letters of plain, uncondensed Gothic type, not less than one-half inch in length.

Wrappers to be marked.

P. S., 56, § 19.
Acts of 1886, 317, § 2.

Penalties for violation of statutes and for erasure of marks, etc.

Whoever sells, exposes for sale, or has in his possession with intent to sell, any article, substance or compound made in imitation or semblance of butter or cheese, or as a substitute for butter or cheese, except as provided in the two preceding sections, and whoever with intent to deceive, defaces, erases, cancels or removes any mark, stamp, brand, label or wrapper provided for in said sections, or in any manner shall falsely label, stamp or mark any box, tub, article or package marked, stamped or labelled as aforesaid, shall for every such offence forfeit to the city or town where the offence was committed one hundred dollars, and for a second and each subsequent offence two hundred dollars.

P. S., 56, § 20.
Acts of 1884, 310, § 2.

Complaints for violations to be instituted by inspectors of milk.

Inspectors of milk shall institute complaints for violations of the provisions of the three preceding sections when they have reasonable cause to believe that such provisions have been violated, and on the information of any person who lays before them satisfactory evidence by which to sustain such complaint. Said inspectors may enter all places where butter or cheese is stored or kept for sale, and said inspectors shall also take specimens of suspected butter and cheese and cause them to be analyzed or otherwise satisfactorily tested, the result of which analysis or test they shall record and preserve as evidence; and a certificate of such result, sworn to by the analyzer, shall be admitted in evidence in all prosecutions under this and the three preceding sections. The expense of such analysis or test, not exceeding twenty dollars in any one case, may be included in the costs of such prosecutions. Whoever hinders, obstructs, or in any way interferes with any inspector, or any agent of an inspector, in the performance of his duty, shall be punished by a fine of fifty dollars for the first offence, and of one hundred dollars for each subsequent offence.

Acts of 1884, 310, § 4.

Portion of sample to be reserved for defendant.

Before commencing the analysis of any sample the person making the same shall reserve a portion which shall be sealed; and in case of a complaint against any person the reserved portion of the sample alleged to be adulterated shall upon application be delivered to the defendant or his attorney.

P. S., 56, § 21.

Terms "butter" and "cheese" defined.

For the purposes of the four preceding sections* the terms "butter" and "cheese" shall mean the products which are usually known by these names, and are manufactured exclusively from milk or cream, with salt and rennet, and with or without coloring matter.

Acts of 1886, 317, § 3.
Acts of 1894, 280, § 1.

Spurious butter not to be marked "dairy" or "creamery." Penalty.

Whoever, by himself or his agents, sells, exposes for sale, or has in his possession with intent to sell, any article, substance or compound, made in imitation or semblance of butter or as a substitute for butter, and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, contained in any box, tub, article or package, marked or labelled with the word "dairy," or the word "creamery," or the name of any breed of dairy cattle, shall for every such offence forfeit to the city or town where the offence was committed one hundred dollars, and for a second and each subsequent offence two hundred dollars.

Acts of 1886, 317, § 4.

Persons selling imitation butter from carriages to be licensed. Penalties.

Every person who conveys any imitation butter, oleomargarine or butterine in carriages or otherwise, for the purpose of selling the same in any city or town, shall within thirty days of the passage of this act, and annually on the first day of May, or within thirty days thereafter, be licensed by the inspector or inspectors of milk of such city or town to sell the same within the limits thereof, and shall pay to such inspector or inspectors

* Public Statutes, sections 17, 18, 19 and 20 of chapter 56.

fifty cents to the use of the city or town. The inspector or inspectors shall pay over monthly to the treasurer of such city or town all sums collected by him or them. In towns in which there is no inspector of milk, licenses shall be issued by the town clerk. Licenses shall be issued only in the names of the owners of carriages or other vehicles, and shall, for the purposes of this chapter, be conclusive evidence of ownership. No license shall be sold, assigned or transferred. Each license shall record the name, residence, place of business, number of carriages or other vehicles used, the name and residence of every driver or other person engaged in carrying or selling imitation butter, oleomargarine or butterine, and the number of the license. Each licensee shall before engaging in the sale of any of the articles as aforesaid cause his name, the number of his license, and his place of business to be legibly placed on each outer side of all carriages or vehicles used by him in the conveyance and sale of the articles as aforesaid, in Gothic letters not less than one inch in length, and he shall report to the inspector or inspectors any change of driver or other person employed by him which may occur during the term of his license. Whoever, without being first licensed under the provisions of this section, sells any of the said articles as aforesaid, or exposes or offers them for sale from carriages or other vehicles, or has them in his custody or possession with intent so to sell, and whoever violates any of the provisions of this section, shall, for the first offence, be punished by fine of not less than thirty nor more than one hundred dollars; for a second offence, by fine of not less than fifty nor more than three hundred dollars.

Acts of 1886, 317, § 5.

Other persons selling imitation butter to be registered.

Every person before selling or offering for sale any of the said articles in a store, booth, stand or market-place in a city or in a town in which an inspector or inspectors of milk are appointed, shall within thirty days of the passage of this act, and annually on the first day of May, or within thirty days thereafter, register in the books of such inspector or inspectors, or if there be no inspector then in the books of the town clerk, and shall pay to him

or them fifty cents to the use of such city or town; and whoever neglects to so register shall be punished for each offence by fine not exceeding twenty dollars.

Acts of 1891, 58, § 1.
Acts of 1894, 280, § 6.
Acts of 1896, 377, § 1.

Sale of imitations of yellow butter prohibited.

No person, by himself or his agents or his servants, shall render or manufacture, sell, offer for sale, expose for sale, take orders for the future delivery of, have in his possession, keep in storage, distribute, deliver, transfer, or convey, with intent to sell within this Commonwealth any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream of the same: *provided*, that nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to look like butter.

The Statute of 1891, chap. 58, which makes a distinction between oleomargarine which is an imitation of yellow butter and that which is not, and which statute is directed only towards oleomargarine of the former class, is not repealed by the Statute of 1891, chap. 412, sect. 1, which is directed to the distinct fraud of selling or offering to persons calling for butter something besides butter.

The fact that two statutes, similar in their nature and purpose, were both passed at the same session of the legislature, and took effect on the same day, is strong evidence that they were intended to stand together.

The enactment of a statute which forbids the manufacture and sale of oleomargarine which is made in imitation of yellow butter is a valid exercise of the police power which remains in the several states, though such oleomargarine has been imported from another state; and it is not in violation of the constitutional provisions giving to congress the power to regulate commerce among the several states.

Commonwealth *v.* Huntley, 156 Mass. 236.
See also Plumley *v.* Massachusetts, 155 U. S. 461.

If a person has for sale in his shop oleomargarine colored in imitation of yellow butter, which is kept in a closed and covered refrigerator and cannot be seen by customers, although he has a sign in the shop to the effect that oleomargarine is sold there, he does not "expose for sale" such oleomargarine, within the meaning of the Statute of 1891, chap. 58, sect. 1.

Commonwealth *v.* Byrnes, 158 Mass. 172.

The Statute of 1891, chap. 58, sect. 1, entitled "An Act to prevent deception in the manufacture and sale of imitation butter," forbids the exposing for sale of oleomargarine colored to look like butter, and it is immaterial whether the particular purchaser was advised of its real character or not.

Commonwealth *v.* Russell, 162 Mass. 520.

Oleomargarine artificially colored by annatto so as to cause it to look like yellow butter produced from pure unadulterated milk, or cream from the same, is within the prohibition of Statute of 1891, chap. 58, sect. 1, which statute has not been repealed, and is constitutional and valid as applied to oleomargarine so colored.

Commonwealth *v.* Kelly, 163 Mass. 169.

Acts of 1891, 58, § 2.

Whoever violates any of the provisions of section one of this act shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the house of correction for a term not exceeding one year. Penalty.

Acts of 1891, 58, § 3.

Inspectors of milk shall institute complaints for the violation of the provisions of this act when they have reasonable cause to believe that any of its provisions have been violated; and on the information of any person who lays before them satisfactory evidence by which to sustain such complaint, said inspectors may enter all places where butter or imitations thereof are stored or kept for sale, and shall also take specimens of suspected butter and imitations thereof and cause them to be analyzed or otherwise satisfactorily tested, the result of which analysis or test they shall record and preserve as evidence, and a certificate of such result sworn to by the analyzer shall be admitted in evidence in all prosecutions under this act. The expense of such analysis or test, not exceeding twenty dollars in any one case, may be Inspectors of milk to institute complaints. Expense of analysis.

Penalty for obstruction.

included in the cost of such prosecutions. Whoever hinders, obstructs, or in any way interferes with any inspector in the performance of his duty shall be punished by a fine of fifty dollars for the first offence and of one hundred dollars for each subsequent offence.

Acts of 1891, 58, § 4.

Act not to impair or prevent prosecution or punishment for violation.

This act shall not be construed to impair or prevent the prosecution and punishment of any violation of laws existing at the time of its passage and committed prior to its taking effect.

Acts of 1891, 412, § 1.
Acts of 1894, 280, § 2.

Sale of imitations of pure butter prohibited.

Whoever by himself or agents sells or offers for sale, to any person who asks, sends or inquires for butter, any oleomargarine, butterine or any substance made in imitation of or semblance of pure butter, not made entirely from the milk of cows, with or without coloring matter, shall be declared guilty of fraud and punished by a fine of not less than one hundred dollars for each offence.

Acts of 1891, 412, § 2.
Acts of 1894, 280, § 3.

Oleomargarine to be properly marked.

Whoever exposes for sale oleomargarine, butterine or any substance made in imitation or semblance of pure butter, not marked and distinguished by all the marks, words and stamps required by existing laws, and not having in addition thereto upon the exposed contents of every opened tub, package or parcel thereof a conspicuous placard with the word "oleomargarine" printed thereon in plain, uncondensed gothic letters, not less than one inch long, shall be fined not less than one hundred dollars for each offence.

Penalty.

Acts of 1891, 412, § 3.

Places of sale to be marked.

Whoever sells oleomargarine, butterine or any other substance made in imitation or semblance of pure butter, from any dwelling, store, office or public mart shall have conspicuously posted thereon the placard or sign, in letters not less than four inches in length, "oleomargarine sold here", or "butterine sold here." Said placard to be approved by the bureau hereinafter provided for by this act.

Any person neglecting or failing to post the placard herein provided for shall be punished by a fine of not less than one hundred dollars for the first offence and one hundred dollars for each day's neglect thereafter. Penalty.

Acts of 1891, 412, § 4.
Acts of 1894, 280, § 4.

Whoever, by himself or agents, peddles, sells, solicits orders for the future delivery of, or delivers from any cart, wagon or other vehicle, oleomargarine, butterine or any substance made in imitation or semblance of pure butter, not having on both sides of said cart, wagon or other vehicle the placard in uncondensed gothic letters, not less than three inches in length, "licensed to sell oleomargarine", shall be punished by a fine of not less than one hundred dollars or imprisonment for not less than thirty days for each offence. Peddlers' wagons to be marked. Penalty.

A complaint under the Statute of 1891, chap. 412, sect. 4, for selling oleomargarine from a wagon, at a time and place named, the defendant "not having then and there on both sides of said vehicle the placard, in uncondensed Gothic letters not less than three inches in length, 'Licensed to sell Oleomargarine,'" is supported by proof that the defendant's wagon was a covered one, with the front and rear ends open; that on the inside of the cover on each side was a placard, in form and size such as the statute requires; that these placards could be seen from the front and rear of the wagon, but could not be seen from the sides thereof; and that there were no placards on the outer sides of the wagon.

At the trial of a complaint under the Statute of 1891, chap. 412, sect. 4, for selling oleomargarine from a wagon, at a time and place named, the defendant "not having then and there on both sides of said vehicle the placard, in uncondensed Gothic letters not less than three inches in length, 'Licensed to sell Oleomargarine,'" the defendant has no ground of exception to the refusal of the judge to rule that this section of the statute "is in conflict with the act of congress of August 2, 1886, and the rules and regulations of the commissioner of internal revenue thereunder, and is therefore unconstitutional and void"

Commonwealth *v.* Crane, 158 Mass. 218.

The Statute of 1891, chap. 412, sect. 4, was not intended to draw fine distinctions between different kinds of oleomargarine, all of which would resemble butter; but it requires that every one who delivers oleomargarine, of whatever sort, from a vehicle upon the public streets, shall carry along with him upon his vehicle a public notice that he is licensed to sell oleomargarine.

Commonwealth *v.* Crane, 162 Mass. 506.

Acts of 1891, 412, § 5.
Acts of 1896, 377, § 2.

Guests at hotels to be notified if oleomargarine is furnished.

Whoever furnishes, or causes to be furnished, in any hotel, restaurant, boarding house or at any lunch counter, oleomargarine or butterine to any guest or patron of such hotel, restaurant or lunch counter, in the place or stead of butter shall notify said guest or patron that the substance so furnished is not butter, and any party so furnishing without such notice shall be punished by a fine of not less than ten nor more than fifty dollars for each offence.

Penalty.

The proprietor of a restaurant furnished oleomargarine to a guest in the place of butter. There were signs in conspicuous places in the restaurant bearing the words, "Butterine used only here," and on the tables were bills of fare on which were printed the words, "Only fine butterine used here." The guest saw neither of the signs, and did not examine the bill of fare, and no oral notice was given to him that the substance furnished to him was not butter. *Held*, that the proprietor of the restaurant could be convicted of an offence under the Statute of 1891, chap. 412, sect. 5.

Commonwealth *v.* Stewart, 159 Mass. 113.

Acts of 1891, 412, § 6.

Governor to appoint an assistant to secretary of board of agriculture. Salary.

The governor, by and with the consent of the council, shall appoint an assistant to the secretary of the board of agriculture, at an annual salary of twelve hundred dollars, and expenses necessarily incurred in the discharge of his duties, to assist in the work prescribed in the eleventh section of this act Said appointee shall hold office for two years or till his successor is appointed, unless sooner removed from office by the governor, and his successor shall be appointed as above provided for.

Term of office.

Acts of 1891, 412, § 7.

Dairy bureau to be appointed.

In order to secure the better enforcement of the provisions of this act and to promote the improvement of the products of the dairy, the governor, by and with the advice and consent of the council, shall appoint three members of the board of agriculture, to constitute a dairy bureau of said board, one to serve for three years, one for two years and one for one year from the first day of July in the year eighteen hundred and ninety-one, or for

such shorter terms respectively as they may continue to be members of said board of agriculture; and, prior to the first day of July in each succeeding year, the governor shall appoint from said board one member of said bureau to serve for three years or for such shorter term, as aforesaid. No person shall continue to be a member of said bureau after he has ceased to be a member of said board, but, on his ceasing to be a member of said board, his place on said bureau shall be filled by the appointment of another member of said board, as aforesaid. The secretary of said board shall be the executive officer of said bureau subject to its control and direction, and said secretary shall, upon assuming said duties, receive, in addition to his present salary, five hundred dollars per annum. The governor may at any time terminate the service of any member of said board as a member of said bureau and may appoint any other member of said board in his place, as above provided. Members of said bureau shall serve without pay and shall have power to enforce all laws relating to dairy products and imitations thereof, and to employ such agents, assistants, experts, chemists or counsel as may be necessary therefor. Said bureau, in the discharge of its duties, shall be subject to the general direction and control of the board of agriculture.

Terms of office.

Secretary.

Salary.

Governor may remove.

Members to serve without pay.

To be subject to board of agriculture.

Acts of 1891, 412, § 8.

The bureau may expend a sum not exceeding four thousand dollars in carrying forward the work of the bureau, and shall make annual reports in detail to the legislature, not later than the fifteenth day of January in each year, of the number of assistants, experts, chemists, agents and counsel employed, and their expenses and disbursements, with such other information as shall be for the advantage of the dairy interests in the state, and they shall make full reports of all investigations made by them with all cases prosecuted and the results of such prosecution. They shall make detailed statements of the said expenses to the auditor of the Commonwealth, on which payment shall be made to the extent of the appropriation.

Bureau may expend four thousand dollars and make annual reports.

Bureau to make a detailed statement of expenses.

Acts of 1891, 412, § 9.
Acts of 1894, 280, § 5.

Bureau to have access to places.

Said bureau and such agents and counsel as they shall duly authorize for that purpose shall have access, ingress and egress to and from all places of business, factories, buildings, carriages and cars, used in the manufacture and sale of any dairy products, or imitation dairy products, and shall have access to all vessels and cans used in such manufacture and sale, and shall have all the authority given by law to the state board of health and any officer thereof, and to the milk inspectors, in the enforcement of all laws relating to dairy products or imitations thereof, and in the prosecutions of violations of said laws. Whoever hinders, obstructs, or in any way interferes with an officer or duly authorized agent of the dairy bureau in the performance of his duty, shall be punished by a fine of one hundred dollars for the first offence, and of two hundred dollars for each subsequent offence

Penalty for obstruction.

Acts of 1891, 412, § 10.

May work in unison with state board of health and milk inspectors.

The said bureau may work in unison with the state board of health, and with inspectors of milk, but they shall not restrict, limit or interfere with the duties of said officers. Nothing herein contained shall be held to circumscribe the rights of said bureau in the prosecution of offenders of the so-called dairy laws or all laws relating to milk, butter, cheese or any adulterations or imitations thereof wherever found within the Commonwealth.

Acts of 1891, 412, § 11.

Duties of dairy bureau.

It shall be the duty of the said bureau to investigate all dairy products and imitation dairy products bought or sold within the Commonwealth; to enforce all laws for the manufacture, transfer and sale of all dairy products and all imitation dairy products within the Commonwealth, with all the powers needed for the same; to investigate all methods of butter and cheese making in cheese factories or creameries, and to disseminate such information as shall be of service in producing a more uniform dairy product of higher grade and better quality.

Acts of 1891, 412, § 12

Fines, how paid.

All fines recovered under this act shall be payable to the treasury of the Commonwealth.

LARD.

Acts of 1887, 449, § 1.

Compound lard to be properly labelled.

No manufacturer or other person shall sell, deliver, prepare, put up, expose or offer for sale any lard, or any article intended for use as lard, which contains any ingredient but the pure fat of swine, in any tierce, bucket, pail or other vessel or wrapper, or under any label, bearing the words "pure," "refined," "family," or either of them, alone or in combination with other words, nor unless every vessel, wrapper or label, in or under which such article is sold or delivered, or prepared, put up or exposed for sale, bears on the top or outer side thereof, in letters not less than one-half inch in length and plainly exposed to view, the words: — Compound Lard.

Acts of 1887, 449, § 2.

Penalty.

Any person who violates any provision hereof shall be punished by fine not exceeding fifty dollars for the first or one hundred dollars for any subsequent offence.

POULTRY.

Acts of 1887, 94, § 1.

Poultry to be properly dressed before sale.

No poultry, except it be alive, shall be sold or exposed for sale until it has been properly dressed, by the removal of the crop and entrails when containing food.

Acts of 1887, 94, § 2.

Penalty.

Whoever knowingly sells or exposes for sale poultry contrary to the provisions of section one of this act shall be punished by a fine of not less than five nor more than fifty dollars for each offence. The boards of health in the several cities and towns shall cause the provisions of this act to be enforced in their respective cities and towns.

Boards of health to enforce

OF THE SALE OF TAINTED OR DAMAGED FISH.

P. S., 56, § 45.

Penalty for selling tainted fish for food.

1809

Whoever sells within this Commonwealth or exports therefrom tainted or damaged fish, unless with the intent that the same shall be used for some other purpose than as food, shall forfeit ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity; and upon a trial in such case the burden of proof shall be upon the defendant to show for what purpose such fish was so exported or sold.

OF THE SALE OF CHOCOLATE.

P. S., 60, § 8.

Chocolate, how to be stamped.

1803

No manufacturer of chocolate shall make any cake of chocolate except in pans in which are stamped the first letter of his christian name, the whole of his surname, the name of the town where he resides, and the quality of the chocolate in figures, *No.* 1, *No.* 2, *No.* 3, as the case may be, and the letters MASS.

P. S., 60, § 9.

Ingredients of.

Boxes, how branded.

Number one shall be made of cocoa of the first quality, and number two of cocoa of the second quality, and both shall be free from adulteration; number three may be made of the inferior kinds and qualities of cocoa. Each box containing chocolate shall be branded on the end thereof with the word *chocolate*, the name of the manufacturer, the name of the town where it was manufactured, and the quality, as described and directed in the preceding section for the pans.

P. S., 60, § 10.

Boxes, when may be seized, etc.

If chocolate manufactured in this Commonwealth is offered for sale or found within the same, not being of one of the qualities described in the two preceding sections and marked as therein directed, the same may be seized and libelled.

OF THE ADULTERATION OF VINEGAR.

P. S., 60, § 69.
Acts of 1883, 257, § 1.

Sale of adulterated vinegar. Penalty.

Every person who manufactures for sale or offers or exposes for sale as cider vinegar, any vinegar not the legitimate product of pure apple juice, known as apple cider or vinegar, not made exclusively of said apple cider or vinegar, into which any foreign substances, ingredients, drugs or acids have been introduced, as may appear by proper tests, shall for each such offence be punished by fine of not less than fifty nor more than one hundred dollars. 1880

P. S., 60, § 70.

Sale of vinegar containing ingredients injurious to health. Penalty.

Every person who manufactures for sale, or offers or exposes for sale, any vinegar found upon proper tests to contain any preparation of lead, copper, sulphuric acid or other ingredients injurious to health, shall for each such offence be punished by fine of not less than one hundred dollars.

P. S., 60, § 71.

Appointment of inspectors.

The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more persons to be inspectors of vinegar for their respective places, who shall be sworn before entering upon their duties.

Acts of 1883, 257, § 2.

Compensation of inspectors.

Any city or town in which an inspector shall be appointed under the preceding section, may provide compensation for such inspector from the time of such appointment, and in default of such provision shall be liable in an action at law for reasonable compensation for services performed under such appointment.

Acts of 1884, 307, § 1.

Sale of adulterated vinegar.

No person shall by himself, his servant or agent, or as the servant or agent of any other person, sell, exchange, deliver or have in his custody or possession with intent to sell or exchange, or expose or offer for sale or exchange, any adulterated vinegar, or label, brand or sell as cider

vinegar, or as apple vinegar, any vinegar not the legitimate product of pure apple juice, or not made exclusively from apple cider.

Acts of 1885, 150, § 1.

Standard of vinegar prescribed.

All vinegars shall be without artificial coloring matter, and shall have an acidity equivalent to the presence of not less than four and one-half per cent. by weight of absolute acetic acid, and in the case of cider vinegar shall contain in addition not less than two per cent. by weight of cider vinegar solids upon full evaporation over boiling water, and if any vinegar contains any artificial coloring matter or less than the above amount of acidity, or in the case of cider vinegar, if it contains less than the above amount of acidity or of cider vinegar solids, it shall be deemed to be adulterated within the meaning of this act.

Acts of 1884, 307, § 3.

Milk inspectors to enforce act.

It shall be the duty of the inspectors of milk who may be appointed by any city or town to enforce the provisions of this act.

Acts of 1884, 307, § 4.

Penalty for violation.

Whoever violates any of the provisions of this act shall be punished by fine not exceeding one hundred dollars.

RULES AND REGULATIONS

OF THE

STATE BOARD OF HEALTH RELATIVE TO THE INSPECTION AND ANALYSIS OF FOOD AND DRUGS.

1. The State Board of Health shall appoint analysts and inspectors, as provided in section 5 of chapter 263, Acts of 1882.

2. It shall be the duty of the inspectors to procure samples of drugs and articles of food at such times and places as the secretary shall direct, in the manner provided in section 6 of chapter 263 of the Acts of 1882, and in section 3 of chapter 289 of the Acts of 1884, and in all acts amendatory of said provisions.

3. Under the direction of the secretary, the inspectors shall, for the identification of samples, affix a number to each sample of food or drugs obtained by them in such manner as may be prescribed. Under no circumstances shall an inspector convey any information to an analyst as to the source from which any sample was obtained.

4. The inspector shall keep records of each sample, each record to include the following items: —

(a) The inspector's number.
(b) The date of purchase or receipt of sample.
(c) The character of the sample.
(d) The name of the vendor.
(e) The name of the city or town and street and number where the sample is obtained, and in the case of a licensed milk peddler, the number of his license.
(f) As far as possible the names of manufacturers, producers or wholesalers, with marks, brands or labels stamped or printed upon goods.

5. It shall be the duty of the analysts so appointed to determine, under the direction of the secretary, by proper examination and analysis, whether articles of food

and drugs, manufactured for sale, offered for sale, or sold within this Commonwealth, are adulterated within the meaning of chapter 263 of the Acts and Resolves passed by the General Court of Massachusetts in 1882, and all acts amendatory thereof, adulteration being defined as follows, viz. : —

In the case of drugs, (1) If sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality or purity laid down therein, unless the order calls for an article inferior to such standard, or unless such difference is made known or so appears to the purchaser at the time of such sale. (2) If when sold under or by a name not recognized in the United States Pharmacopœia, but which is found in some other pharmacopœia or standard work on Materia Medica, it differs materially from the standard of strength, quality or purity laid down in such work. (3) If its strength or purity falls below the professed standard under which it is sold.

In case of food, (1) If any substance or substances have been mixed with it, so as to reduce or lower or injuriously affect its quality or strength. (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it. (3) If any valuable constituent has been wholly or in part abstracted from it. (4) If it is an imitation of or is sold under the name of another article. (5) If it consists wholly or in part of a diseased, decomposed, putrid or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the produce of a diseased animal (6) If it is colored, coated, polished or powdered, whereby damage is concealed, or if it is made to appear of better or of greater value than it really is. (7) If it contains any added poisonous ingredient, or any ingredient which may render it injurious to the health of the person consuming it.

6. It shall also be the duty of the analysts to receive such specimens of food and drugs for analysis as may be delivered to them by the secretary, or by the inspectors, and to examine the same. To avoid, as far as possible, all suggestions or danger of specimens having been tam-

pered with, each analyst shall keep each specimen in his possession in a suitable and secure place, labelled in such a manner as to prevent any person from having access to the same without the knowledge and presence of the analyst.

Analyses of perishable articles should be made promptly after they are received.

7. An analyst shall give no information, under any circumstances, regarding the result of any analysis, to any person except to the secretary of the board, prior to any trial in court in reference to such analysis.

The analysts shall carefully avoid any error regarding the inspector's number attached to each sample, and shall report the results of their work in detail to the secretary.

In the case of all articles having a numerical standard provided by statute, the result of the analysis should show their relation to such standard.

8. Before beginning the analysis of any sample, the analyst shall reserve a portion, which shall be sealed, and in the event of finding the portion analyzed to be adulterated, he shall preserve the sealed portion, so that in case of a complaint against any person the last named portion may, on application, be delivered by the secretary to the defendant or to his attorney.

9. Each analyst shall present to the secretary, on the Monday before the first Thursday of each month, a summary of the analyses made by him during the previous month.

Each analyst shall also present, on or before the first of January of each year, an annual report of the work done for the year ending on the 30th of September preceding.

10. The secretary shall have charge of the reports of analyses, and shall cause cases founded on such reports to be submitted to the courts for prosecution.

In each case of a retailer, and of every dealer not a manufacturer or producer, he may, if the party has not been previously complained of in court, issue a notice or warning of any violation of the law relative to the adulteration of food and drugs, and of the offender's liability to prosecution on a repetition of the sale.

11. Should the result obtained by any analyst be questioned in any given case, another analyst shall repeat the analysis, unless otherwise instructed by the board, provided a sufficient sum to meet the expense of the analysis be deposited with the secretary by any interested party feeling aggrieved, which sum will not be returned unless the second analysis fails to confirm the first in essential particulars.

12. Any appeal from the decision of an analyst shall be filed with the secretary, who shall report it, and any matter in controversy, to the board, giving his judgment thereon, and the board shall supervise and control the action of its officers in executing the law.

13. Where standards of strength, quality or purity are not fixed by the act, the analysts shall present to the secretary such standard as in their judgment should be fixed, and the secretary shall report the same to the board for its action.

14. Whenever a drug or preparation, not described in a national pharmacopœia or other standard work on Materia Medica, shall be manufactured, offered for sale or used in this state, the standard of such drug, and the standard and proportion of the ingredients of such preparation, and the range of variability from such standard or standards, shall be ascertained by the analysts, who shall report the same through the secretary to the board.

15. The analysts shall occupy such time in the performance of their respective duties as a reasonable compliance with the terms of the statute shall require, and shall be present one hour of each day, at such time of the day and at such place as shall be designated by the board, to meet the convenience of interested parties and the public.

LAWS

CONCERNING THE REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS.

OF THE REGISTRY AND RETURN OF BIRTHS, MARRIAGES AND DEATHS.

P. S., 32, § 1.
Acts of 1887, 202, § 5.
Acts of 1890, 402.

City and town clerks to record births, marriages and deaths.

The clerk of each city and town shall receive or obtain, and record and index, the following facts concerning the births, marriages and deaths therein, separately numbering and recording the same in the order in which he receives them, designating in separate columns as follows: — 1639 1785 1844 1849

In the record of births, the date of birth, the place of birth, the name of the child (if it has any), the sex and color of the child, the names and the places of birth of the parents, the occupation of the father, the residence of the parents, and the date of the record.

In the record of marriages, the date of the marriage, the place of marriage, the name, residence, and official station of the person by whom married, the names and the places of birth of the parties, the residence of each, the age and color of each, the condition of each (whether single or widowed), the occupation, the names of the parents, and the date of record.

In the record of deaths, the date of the death, the name of the deceased, the sex, the color, the condition (whether single, widowed, or married), the age, the residence, the occupation, the place of death, the place of birth, the names and places of birth of the parents, the disease or cause of death, the place of burial, if the deceased was a married woman her maiden name and the name of her husband, and the maiden name of the mother of any deceased person, and the date of the record.

P. S., 32, § 2.

Parents and others to give notice of births and deaths.

1795
1839
1855

Parents shall give notice to the clerk of their city or town of the births and deaths of their children; every householder shall give like notice of every birth and death happening in his house; the eldest person next of kin shall give such notice of the death of his kindred; the keeper of a workhouse, house of correction, prison, hospital, or almshouse, except the state almshouse and the master or other commanding officer of a ship, shall give like notice of every birth and death happening among the persons under his charge. Whoever neglects to give such notice for the space of six months after a birth or death shall forfeit a sum not exceeding five dollars.

P. S., 32, § 3.
Acts of 1888, 63.
Acts of 1883, 306, § 1.
Acts of 1893, 263, § 1.

Physician to certify, etc.

A physician who has attended a person during his last illness shall, when requested, forthwith furnish for registration, a certificate stating, to the best of his knowledge and belief, the name of the deceased, his age, the disease of which he died, the duration of his last sickness, and the date of his decease; and a physician who has attended at a birth of a child dying immediately thereafter, or at the birth of a stillborn child, shall, when requested, forthwith furnish for registration a certificate, stating to the best of his knowledge and belief the fact that such a child died after birth or was born dead. If a physician neglects or refuses to make a certificate as aforesaid, or makes a false statement therein, he shall be punished by a fine not exceeding fifty dollars.

Penalty.

P. S., 32, § 4.
Acts of 1887, 202, § 2.

Sextons and others to make returns to city and town clerks.

1844
1849

Every sexton, undertaker, or other person having charge of a burial-ground, and every undertaker or superintendent of burials having charge of the funeral rites preliminary to the interment of a human body, shall forthwith obtain and return to the clerk of the city or town in which the deceased resided, or the death occurred, the facts required

by this chapter to be recorded by said officer concerning the deceased, and the person making such return shall receive from his city or town the fee of twenty-five cents therefor. All such returns shall be preserved by said clerk or registrar, and filed, arranged and indexed conveniently for examination and reference.

P. S., 32, § 5.
Acts of 1883, 124,
Acts of 1888, 306, § 2.
Acts of 1893, 263, § 2.

Burial or removal of body not allowed till certificate has been given.

No undertaker, sexton or other person shall bury in a city or town or remove therefrom a human body until he has received a permit so to do from the board of health or its duly appointed agent, or, if there is no board of health in such city or town, from the city or town clerk. No such permit shall be issued until there has been delivered to such board, or agent or clerk, as the case may be, a satisfactory written statement containing the facts required by this chapter to be returned and recorded, together with the certificate of the attending physician, if any, as required by section three of this chapter, or in lieu thereof a certificate as hereinafter provided. If there is no attending physician, or if the certificate of the attending physician cannot be obtained, for good and sufficient reasons, early enough for the purpose, the chairman of the board of health or any physician employed by a city or town for the purpose shall, upon request of said board, agent or clerk, make such certificate as is required of the attending physician; and in case of death by violence the medical examiner shall, if requested, make the same. When such satisfactory statement and certificate are delivered to the board of health or to its agent, the board or agent shall forthwith countersign and transmit the same to the clerk or registrar for registration. The person to whom the permit is so given shall thereafter furnish for registration any other information as to the deceased or to the manner and cause of the death, as the clerk or registrar may require. Any person violating any of the provisions of this section shall be punished by a fine not exceeding fifty dollars.

1878

Penalty.

Acts of 1883, 124, § 2.
Acts of 1887, 335.

Transportation of bodies of persons who have died of infectious disease. Such bodies to be so prepared as to preclude danger.

No railroad corporation, or other common carrier or person, shall convey or cause to be conveyed, through or from any city or town in this Commonwealth, the remains of any person who has died of small-pox, scarlet-fever, diphtheria, or typhoid fever, until such body has been so encased and prepared as to preclude any danger of communicating the disease to others by its transportation; and no local registrar or clerk shall give a permit for the removal of such body until he has received from the board of health of the city, or the selectmen of the town where the death occurred, a certificate, stating the cause of death, and that said body has been prepared in the manner set forth in this section, which certificate shall be delivered to the agent or person who receives the body.

Penalty.

Any person violating the provisions of this section shall be punished by fine, not exceeding twenty-five dollars.

P. S., 32, § 6.

Undertakers, how licensed.

1872

The boards of health of towns and the mayor and aldermen of cities shall, on or before the first day of July in each year, license a suitable number of undertakers to take charge of the funeral rites preliminary to the interment of a human body.

P. S., 32, § 7.
Acts of 1883, 158.
Acts of 1889, 288.

Physicians, etc., to return monthly lists of births.

1880

Physicians and midwives shall, on or before the fifth day of each month, report to the clerk of each city or town, a correct list of all children, born therein during the month next preceding, at whose birth they were present, stating the date and place of each birth, the name of the child (if it has any), the sex and color of the child, the name, place of birth and residence of the parents, and the occupation of the father. The fee of the physician or midwife shall be twenty-five cents for each birth so reported, and shall be paid by the city or town in which the report is made.

P. S., 32, § 8.

The clerk of each city and town shall give public notice that he is prepared to furnish, to all physicians and midwives applying therefor, blanks for returns under the preceding section.

Clerks to give notice that they will furnish blanks.

P. S., 32, § 9.

Any physician or midwife neglecting to report such list for ten days after it is due shall for each offence forfeit a sum not exceeding twenty dollars.

Penalty for neglecting to report.

P. S., 32, § 10.
Acts of 1894, 206, § 10.

The clerk of each city and town, except Boston, shall annually, on or before the first day of March, transmit to the secretary of the Commonwealth certified copies of the records of the births, marriages, and deaths which have occurred therein during the year ending on the last day of the preceding December. The city registrar of Boston shall transmit the copies of his records on or before the first day of May annually.

Clerks to send copies of records to secretary of state.

1844
1849

Acts of 1892, 305, § 1.

Whenever the records of any city or town do not contain the facts relating to a birth, death or marriage which occurred therein, or whenever such facts are not fully or correctly stated on such records, the clerk or registrar of such city or town may receive a deposition, under oath, containing such facts as are desired for record, and shall then file said deposition and record said facts in a book to be kept for that purpose, stating in addition thereto the name and residence of the deponent and the date of such record. The clerk or registrar shall keep such book separate and apart from the official records of his office, and may certify to the facts contained therein: *provided, however*, that such certificate shall state in addition to all the facts so recorded that the certificate is issued in accordance with the provisions of this act.

Clerk or registrar may receive deposition as to omitted facts.

Clerk must keep separate book.

Acts of 1892, 305, § 2.
Acts of 1894, 402, § 1.

New copies of records to be verified.

Whenever it is deemed expedient to make a new copy of any earlier records, each page shall be verified and signed by the clerk or registrar, and such record while preserved in proper custody shall have the same force and effect as the original record.

Acts of 1892, 305, § 3.

Penalty for false return.

Any person who shall make a false return in regard to any birth or death shall be liable to a fine not exceeding fifty dollars.

Acts of 1894, 402, § 2.

Clerk or registrar shall not alter or add to records.

No town or city clerk or registrar shall alter or add to any record of a birth, death or marriage already entered in any book or formal list in his charge, except upon such evidence as was required by law for the original entry, or upon a certified copy of the record of any other city or town, or of the record made at the time by any person since deceased, who was required by law to furnish the evidence of a birth, death or marriage, and such correction shall be at his discretion. In no case shall the first entry be erased, but all corrections shall be added.

P. S., 32, § 11.

Record to be evidence.

The record of the town clerk relative to a birth, marriage, or death shall be prima facie evidence, in legal proceedings, of the facts recorded. A certificate, signed by the town clerk for the time being, shall be admissible as evidence of such record.

The record of a marriage by the justice of the peace or minister or the town clerk's or registrar's record of births, marriages and deaths, kept as required by these statutes, or a duly certified copy of either, is held competent evidence.

Kennedy *v.* Doyle, 10 Allen, 161, 164.

The statutes provide that the record of a marriage kept by the person before whom the marriage is solemnized, or by the clerk or registrar of any city or town, shall be received in all courts as presumptive evidence of such marriage.

Commonwealth *v.* Waterman, 122 Mass. 43, 58.

It seems "that the Gen. Stats., chap. 21, sect. 6 (Pub. Stats., chap. 32, sect. 11), being but declaratory of the common law of this Commonwealth, was intended to be retrospective and to apply to all records, whether past or future, of all facts required at the time of the record by law to be recorded relative to any birth, marriage or death."

Shutesbury *v.* Hadley, 133 Mass. 242, 247.

For further decisions on this section see

Commonwealth *v.* Stevenson, 142 Mass. 466.

Commonwealth *v.* Hayden, 163 Mass. 453.

P. S., 32, § 12.

Fees of clerks and registrars for receiving, recording, etc.

1866
1873

The clerk of each city or town (except in such cities and towns as choose a registrar, in which cases the provisions of this section shall apply to the registrar), for receiving or obtaining, recording, indexing, and returning the facts relating to marriages, births, and deaths occurring therein, shall be entitled to receive from the city or town for each marriage, fifteen cents; for each birth, fifty cents; for each death returned to him by the persons specified in sections two, three, and four, twenty cents for each of the first twenty entries, and ten cents for each subsequent entry; for each death not so returned, but by him obtained and recorded, thirty-five cents, as the same shall be certified by the secretary of the Commonwealth; but a city or town containing more than ten thousand inhabitants may limit the aggregate compensation allowed to their clerk or registrar. He shall forfeit not less than twenty nor more than one hundred dollars for each refusal or neglect to perform any duty required of him by sections one, two, three, four, ten, twelve, fourteen, sixteen and eighteen.

Penalty.

P. S., 32, § 13.

Superintendent of state almshouse to record and return facts, etc.

Clerk of town exempt.

1855

The superintendent of the state almshouse shall obtain, record, and make return of the facts in relation to the births and deaths which occur in his institution, in like manner as is required of town clerks. The clerk of a town in which such almshouse is located shall, in relation to the births and deaths of persons in said almshouse, be exempt from the duties otherwise required of him by this chapter.

P. S., 32, § 14.

Secretary to furnish blank books and forms.

1844
1849

The secretary shall at the expense of the Commonwealth prepare and furnish to the clerks of the several cities and towns, and to the superintendent of the state almshouse, blank books of suitable quality and size to be used as books of record under this chapter, blank books for indexes thereto, and blank forms for returns, on paper of uniform size; and shall accompany the same with such instructions and explanations as may be necessary and useful. City and town clerks shall make such distribution of blank forms of returns furnished by the secretary as he shall direct.

P. S., 32, § 15.

Secretary to cause returns to be bound and report results to general court.

1844
1849

The secretary shall cause the returns received by him for each year to be bound together in one or more volumes with indexes thereto. He shall prepare from the returns such tabular results as will render them of practical utility, make report thereof annually to the general court, and do all other acts necessary to carry into effect the provisions of this chapter.

P. S., 32, § 16.

Registrars may be chosen in certain cases.

1849

A city or town containing more than ten thousand inhabitants may choose a person other than the clerk to be registrar, who shall be sworn, and to whom all the provisions of this chapter concerning clerks shall apply. The returns and notices required to be made and given to clerks shall be made and given to such registrar under like penalties.

P. S., 32, § 17.

Secretary to prosecute for penalty.

The secretary of the Commonwealth shall prosecute, by an action of tort in the name of the Commonwealth, for the recovery of any penalty or forfeiture imposed by sections two, three, twelve, sixteen, and eighteen.

P. S., 32, § 18.

Cities or towns may make rules to enforce registration.

A city or town may make rules and regulations to enforce the provisions of this chapter, or to secure a more perfect registration of births, marriages, and deaths therein.

Acts of 1889, 208.

Clerk or registrar to make certified copies of certain records and send to other cities and towns.

The clerk or registrar of each city and town shall on the first day of each month make a certified copy of the record of all deaths and births recorded in the books of said city or town during the previous month, whenever the deceased person or the parents of the child born, were resident in any other city or town in this Commonwealth at the time of said death or birth; and shall transmit said certified copies to the clerk or registrar of the city or town in which such deceased person or parents were resident at the time of said death or birth, stating in addition the name of the street and number of the house, if any, where such deceased person or parents so resided, whenever the same can be ascertained; and the clerk or registrar so receiving such certified copies shall record the same in the books kept for recording deaths or births. Such certified copies shall be made upon blanks to be furnished for that purpose by the secretary of the Commonwealth.

Acts of 1889, 224.

Physicians to certify primary and secondary causes of death in case of soldiers and sailors.

A physician who has attended a person in his last illness in furnishing a certificate for the purposes of registration as required by section three of chapter thirty-two of the Public Statutes shall, in case the deceased was a soldier or a sailor who served in the war of the rebellion, give both the primary and the secondary or immediate cause of death as nearly as he can state the same. If a physician refuses or neglects to make such certificate he shall forfeit to the treasurer the sum of ten dollars for the use of the town in which he resides.

P. S., 145, § 24.
Acts of 1887, 202, § 3.
Acts of 1892, 300.

Persons performing marriages to keep records and make returns.

Every justice of the peace, minister, and clerk or keeper of the records of a meeting wherein marriages among Friends or Quakers are solemnized shall make and keep a record of each marriage solemnized before him, or in such meeting, and of all facts relating to the

1834
1844

marriage which are required to be recorded by section one of chapter thirty-two of the Public Statutes. He shall also, between the first and tenth days of the month following each marriage solemnized by him, return each certificate issued under the provisions of sections sixteen and seventeen of this chapter, to the clerk or registrar who issued the same; and if the marriage was solemnized in a city or town other than the place or places in which the parties to the marriage resided, return a copy of the certificate, or of either certificate in case two were issued, to the clerk or registrar of the city or town in which the marriage was solemnized. Each certificate and copy so returned shall contain a statement giving the place and date of marriage, and shall be attested by the signature of the person who solemnized the same, with his official station and residence added thereto. All certificates or copies so returned shall be recorded by the clerk or registrar receiving the same, and every person neglecting to make the record and returns required by this section shall forfeit for each neglect not less than twenty nor more than one hundred dollars. All such returns shall be preserved by said clerk or registrar, and filed, arranged and indexed conveniently for examination and reference.

Penalty.

Returns to be filed for reference.

P. S., 145, § 29.

Record of marriage to be evidence thereof.

The record of a marriage, made and kept as prescribed by law by the person before whom the marriage has been solemnized, or by the clerk or registrar of a city or town, or a copy of such record duly certified, shall be received in all courts and places as presumptive evidence of such marriage.

See cases under Pub. Stats., chap. 32, sect. 11. (p. 168.)

P. S., 145, § 30.

Certificate from consul to be evidence.

When a marriage has been solemnized by a consul or diplomatic agent of the United States, a copy of the record or a certificate from such consul or agent shall be presumptive evidence of such marriage.

Acts of 1887, 202, § 4.

Certain provisions to apply to returns of marriages and deaths.

The provisions of sections two and three of chapter two hundred and two of the acts of the year eighteen hundred and eighty-seven shall apply to all returns of marriages and deaths now in the offices of town and city clerks and city registrars.

P. S., 37, § 5.
Acts of 1887, 202, § 1.

A city or town may cause records to be copied.

A city or town may cause to be carefully copied, such of its records as relate to grants of land, to divisions and allotments of land made by the original proprietors of the township, or to easements, private rights, or ways, and also any records of births, deaths and marriages kept by such city or town, or by a parish within the same.

1857

Acts of 1893, 461, § 1.

Jewish rabbi may solemnize marriage, and must be licensed.

Any rabbi of the Israelitish faith may solemnize a marriage under the same rules, restrictions, obligations and penalties as are imposed by law upon ministers of the gospel in this Commonwealth. Such rabbi must be one duly licensed to act by a congregation of said faith established in this Commonwealth.

Acts of 1893, 461, § 2.

Provisions of P. S. 145, § 27, to apply.

The provisions of section twenty-seven of chapter one hundred and forty-five of the Public Statutes shall apply to such a marriage.

Acts of 1894, 409, § 1.

Notices of intention of marriage.

City clerks and registrars may require notices of intention of marriage to be given to them in writing, on blanks to be furnished by them, by one of the parties to such intended marriage, or by his or her parent or legal guardian, and may require the party giving such notice to make oath before them to the truth of all the statements therein whereof he or she could have knowledge. No fee shall be charged for administering such oath.

Acts of 1894, 409, § 2.

City clerk or registrar may refuse to issue certificate in certain cases.

Any city clerk or registrar may refuse to issue a certificate to any parties, in case he has reasonable grounds to believe that any of the statements contained in the notice of intention of marriage are incorrect; but he may, in his discretion, accept depositions under oath, made before him, and such depositions shall be taken and deemed to be sufficient proof of the facts therein stated to authorize the issuing of a certificate. A city clerk or registrar may dispense with the statement of any of the facts required by law to be given in notices of intention of marriage, whenever such facts do not relate to or affect the identity or age of the parties, if he is satisfied that the same cannot be obtained with reasonable effort.

Acts of 1894, 409, § 3.

Notices not to be received except at office.

No city clerk or registrar shall be required to receive notices of intention of marriage at any place except his office, nor shall he be required to receive such notices on the Lord's day or public holidays.

Acts of 1894, 409, § 4.

Consent of parent to be in duplicate in certain cases.

Whenever in the marriage of a minor it is necessary to give notice in two towns or cities, the town or city clerk or registrar who first takes the consent of the parent or guardian shall take it in duplicate, retaining one copy and delivering the other duly attested by him to the party obtaining the certificate, to be given to the clerk or registrar issuing the second certificate; and no fee shall be charged for such consent or copy.

Acts of 1894, 409, § 5.

Marriage by a clergyman or rabbi.

Any clergyman or rabbi duly authorized to solemnize a marriage in this Commonwealth may perform the ceremony anywhere within the same.

Acts of 1894, 409, § 6.

Notice not to be given without consent of both parties.

No person shall give the notice of intention of marriage required by law, without the consent of both the parties to such intended marriage, and any person giving such notice without such consent shall be liable in an action of

tort to the person whose name was so used without such consent, for all damages thereby sustained by such person.

Acts of 1894, 409, § 7.

Notice may be cancelled by superior court in certain cases.

The superior court, upon petition of either of the parties alleged to intend marriage in a notice of intention of marriage, given without the consent of both the parties therein alleged to intend marriage, and not followed by a marriage between said parties, may, upon such notice as said court may order and after a hearing upon such petition, adjudge that such notice of intention of marriage be cancelled and expunged from the records of the city or town in which the same was recorded.

Acts of 1894, 409, § 8.

Penalty.

Whoever violates any of the provisions of this act shall, upon conviction thereof within one year after such violation, be punished by a fine not exceeding five hundred dollars or by imprisonment in jail or in the house of correction for not more than one year, or both.

RETURNS OF DIVORCES.

Acts of 1882, 194, § 1.

Returns of statistics of divorce to be made by clerks of courts to secretary of state annually.

The clerks of courts for the several counties, and of the supreme judicial court for the county of Suffolk, shall, annually, during the month of February, make returns to the secretary of the Commonwealth in relation to libels for divorce in their respective counties for the calendar year next preceding. Such returns shall specify the following details: the number of libels pending at the beginning of the year; the number of libels filed within the year; the number of divorces granted; the number of divorces refused; the number of libels contested; the number of libels uncontested; the alleged cause for divorce in each case; the sex of the libellant and the length of time the parties have been married; and the number of cases in which notice has been given to the district-attorney for prosecution under section forty-four of chapter one hundred and forty-six of the Public Statutes, and the criminal offence for which divorce has been granted in such cases.

Acts of 1882, 194, § 2.

Secretary to furnish blanks.

The secretary shall furnish the said clerks of courts with suitable blank forms for the returns provided for in the preceding section.

Acts of 1882, 194, § 3.

Secretary to prepare an abstract and publish in registration report.

The secretary shall annually prepare from said returns full and complete abstracts and tabular statements of the facts relating to divorces for each county, and embody such abstracts and statements, with necessary analyses, in the annual reports to the legislature relating to the registry of births, deaths and marriages.

THE INQUEST LAWS.

[The following code supersedes the coroner laws, which were repealed in 1877, abolishing the office of coroner.]

DUTIES OF MEDICAL EXAMINERS.

P. S., 26, § 1.

Appointment of medical examiners.

The governor shall nominate and by and with the advice and consent of the council shall appoint, in each county, able and discreet men, learned in the science of medicine, to be medical examiners in such county; and every such nomination shall be made at least seven days prior to the appointment.

P. S., 26, § 2.

Section 2 defines the limits of the districts occupied by the medical examiners. The length of the section forbids its insertion here. The names of the existing medical examiners, and of the cities and towns which comprise their districts, may be found in the Legislative Manuals of each year, and in Brown's Medical Register of New England.

P. S., 26, § 3.

Associate examiner for Suffolk.

The governor may also in like manner nominate and appoint an associate medical examiner for the county of Suffolk, who shall, at the request of either of the medical examiners for said county, perform all the duties and exercise all the powers of a medical examiner in said county, but he shall not in any year be so required to serve for more than one month at the request of either of said medical examiners.

P. S., 26, § 4.

Term of office and removal.

Said medical examiners and associate medical examiner shall hold their offices for a term of seven years from the time of their respective appointments, but shall be liable to removal from office by the governor and council at any time for cause shown.

P. S., 26, § 5.

Official bonds, etc.

Each medical examiner and the associate medical examiner for Suffolk county shall, before entering upon the duties of his office, be sworn, and give bond to the treasurer of the county, with sureties in the sum of five thousand dollars, for the faithful performance of such duties. If he fails to give such bond for thirty days after his appointment, such appointment shall be void.

Pub. Stats., chap. 26, sect. 6, was repealed by 1893, 257, § 3.

P. S., 26, § 7.

Discharge of surety on bond.

A surety on any such bond, or his heirs, executors, or administrators, may petition the superior court, for the county for which the officer who gave it was appointed, to be discharged from such bond, and like proceedings shall thereupon be had as in case of a similar petition by a surety on a sheriff's official bond.

P. S., 26, § 8.

Breach of condition of bond.

If the condition of any such bond is broken to the injury of any person, the officer who gave it shall be liable to removal from his office and be subject to like penalties as sheriffs in like cases, and actions may be brought upon such bonds in like manner as upon the official bonds of sheriffs.

P. S., 26, § 9.
Acts of 1885, 379, § 1.
Acts of 1890, 213.
Acts of 1892, 286, § 1.

Salaries and fees of medical examiners.

In the county of Suffolk each medical examiner shall receive from the treasurer of the county, in full for all services performed by him, a salary of four thousand

dollars a year, and the associate medical examiner a salary of six hundred and sixty-six dollars; but if the said associate medical examiner serves in any year more than two months, at the request of either medical examiner, he shall, for such service in excess of two months, be paid at the same rate as such medical examiner, and such compensation shall be deducted from the salary of the medical examiner in whose stead he serves. The medical examiners in other counties shall receive fees as follows: For a view without an autopsy, five dollars; for a view and autopsy, thirty dollars; and for travel, at the rate of ten cents a mile to and from the place of view.

P. S., 26, § 10.

Duties of medical examiners.

Medical examiners shall make examination as hereinafter provided, upon the view of the dead bodies of such persons only as are supposed to have come to their death by violence.

P. S., 26, § 11.

When an autopsy shall be made.

When a medical examiner has notice that there has been found, or is lying within his county, the dead body of a person who is supposed to have come to his death by violence, he shall forthwith repair to the place where such body lies, and take charge of the same; and if, on view thereof and personal inquiry into the cause and manner of the death, he deems a further examination necessary, he shall, upon being thereto authorized in writing by the district attorney, mayor or selectmen of the district, city, or town where such body lies, make an autopsy in the presence of two or more discreet persons, whose attendance he may compel by subpœna if necessary, and shall then and there carefully reduce or cause to be reduced to writing every fact and circumstance tending to show the condition of the body and the cause and manner of death, together with the names and addresses of said witnesses, which record he shall subscribe. Before making such autopsy he shall call the attention of the witnesses to the position and appearance of the body.

See Commonwealth v. Dunan, 128 Mass. 422.
Commonwealth v. Taylor, 132 Mass. 261.

P. S., 26, § 12.

District attorney or other magistrate to be notified if death was caused by violence.

If upon such view, personal inquiry or autopsy, he is of opinion that the death was caused by violence, he shall at once notify the district attorney and a justice of the district, police or municipal court for the district or city in which the body lies, or a trial justice, and shall file a duly attested copy of the record of his autopsy in such court or with such justice, and a like copy with such district attorney; and shall in all cases certify to the clerk or registrar having the custody of the records of births, marriages and deaths in the city or town in which the person deceased came to his death, the name and residence of the person deceased, if known, or when the name and residence cannot be ascertained, a description of the person deceased as full as may be, for identification, together with the cause and manner by and in which he came to his death.

P. S., 26, § 13.

When inquest shall be held.

The court or trial justice shall thereupon hold an inquest, which may be private, in which case any or all persons other than those required to be present by the provisions of this chapter, may be excluded from the place where such inquest is held; and said court or trial justice may also direct the witnesses to be kept separate, so that they cannot converse with each other until they have been examined. The district attorney, or some person designated by him, may attend the inquest and examine all witnesses. An inquest shall be held in all cases of death by accident upon a railroad; and the district attorney or the attorney-general may, if he deems it necessary or expedient, direct an inquest to be held in the case of any other casualty from which the death of a person results.

P. S., 26, § 14.

Witnesses may be summoned.

The justice or district attorney may issue subpœnas for witnesses, returnable before such court or trial justice. The persons served with such process shall be allowed the same fees, their attendance may be enforced in the same manner, and they shall be subject to the same pen-

alties, as if served with a subpœna in behalf of the Commonwealth in a criminal prosecution pending before such court, or trial justice.

P. S., 26, § 15.

Justices to report when, where and how deceased came to his death.

The presiding justice or trial justice shall, after hearing the testimony, draw up and sign a report in which he shall find and certify when, where and by what means the person deceased came to his death, his name if known, and all material circumstances attending his death; and if it appears that his death resulted wholly or in part from the unlawful act of any other person or persons, he shall further state the name of such person or persons, if known to him, and he shall file such report with the records of the superior court in the county wherein the inquest is held.

See Commonwealth *v.* Ryan, 134 Mass. 223, 225.

P. S., 26, § 16.

Witnesses may be bound over in certain cases.

If the justice finds that murder, manslaughter, or an assault has been committed, he may bind over, as in criminal prosecutions, such witnesses as he deems necessary, or as the district attorney may designate, to appear and testify at the court in which an indictment for such offence may be found or presented.

P. S., 26, § 17.

Justice to issue process for arrest of person charged with commission of offence.

If a person charged by the report with the commission of an offence is not in custody, the justice shall forthwith issue process for his apprehension, and such process shall be made returnable before any court or magistrate having jurisdiction in the premises, who shall proceed therein in the manner required by law; but nothing herein shall prevent any justice from issuing such process before the finding of such report if it be otherwise lawful to issue the same.

P. S., 26, 18.

Inquest may be ordered by district attorney or by attorney-general.

If a medical examiner reports that a death was not caused by violence, and the district attorney or the attorney-general is of a contrary opinion, either the district attorney or the attorney-general may, notwithstanding such report, direct an inquest to be held in accordance

with the provisions of this chapter, at which inquest he, or some person designated by him, shall be present and examine all witnesses.

P. S., 26, § 19.

Chemist may be called to aid the examination.

The medical examiner may, if he deems it necessary, call a chemist to aid in the examination of the body or of substances supposed to have caused or contributed to the death, and such chemist shall be entitled to such compensation for his services as the medical examiner certifies to be just and reasonable, the same being audited and allowed in the manner herein provided. A clerk who may be employed to reduce to writing the results of a medical examination or autopsy, shall be allowed for his services two dollars per day.

P. S., 26, § 20.
Acts of 1887, 310, § 1.

Disposal of body.

The medical examiner upon the completion of his autopsy in any case arising under the provisions of this chapter, or upon the conclusion of his view or medical examination when an autopsy is deemed unnecessary, shall deliver the dead body, upon their claim therefor, to one or more of the persons hereinafter named; and they shall be entitled thereto as follows: — First, the husband or wife as the case may be. Second, the next of kin. Third, any friend of the deceased. But if the dead body is unidentified or unclaimed for a period of not less than forty-eight hours following the view thereof, the medical examiner shall deliver the body to the overseers of the poor of the city or town wherein it is found lying, and said overseers shall decently bury the same in accordance with the provisions of section seventeen of chapter eighty-four of the Public Statutes.

P. S., 26, § 21.

Services for bringing dead body to land may be compensated.

When services are rendered in bringing to land the dead body of a person found in any of the harbors, rivers or waters of the Commonwealth, the medical examiner may allow such compensation for said services as he deems reasonable, but this provision shall not entitle any person to compensation for services rendered in searching for a dead body.

P. S., 26, § 22.

In all cases arising under the provisions of this chapter the medical examiner shall take charge of any money or other personal property of the deceased, found upon or near the body, and deliver the same to the person or persons entitled to its custody or possession; or, if not claimed by such person within sixty days, then to a public administrator, to be administered upon according to law.

Medical examiner to take charge of money or other property found on or near the body.

See Smiley *v.* Allen, 13 Allen, 465.

P. S., 26, § 23.

A medical examiner who fraudulently neglects or refuses to deliver any such property to such person within three days after due demand upon him therefor shall be punished by imprisonment in the jail or house of correction not exceeding two years, or by fine not exceeding five hundred dollars.

Penalty for neglecting to give up property.

P. S., 26, § 24.
Acts of 1887, 310, § 2.

Every medical examiner shall return an account of the expenses of each view or autopsy, including his fees, to the county commissioners having jurisdiction over the place where the examination or view is held, or in the county of Suffolk to the auditor of the city of Boston, and shall annex to his return the written authority under which the autopsy was made. Such commissioners or auditor shall audit such accounts and certify to the treasurer of the county what items in such account are deemed just and reasonable and such items shall be paid by said treasurer to the person entitled to receive the same.

Account of expenses and fees to be rendered and audited.

P. S., 26, § 25.
Acts of 1883, 61.

The fees of trial justices for the services specified in this chapter shall be as follows: namely, for receiving and filing a duly attested copy of the record of an autopsy, fifty cents; for each subpœna issued, ten cents; for each day's attendance in holding the inquest, five dollars; for the recognizance of witnesses, twenty cents; and for drawing up and filing a report in superior court, five dol-

Fees of trial justices for services at inquests.

lars. And the fees of witnesses and officers for attendance, travel and services at such inquests shall be the same as in criminal prosecutions before such trial justices. The said fees, having been audited by the district-attorney, shall be paid from the treasury of the county.

Acts of 1885, 40.

Fees of special justices of district courts, etc.

A special justice of a district, police or municipal court, who holds an inquest under the provisions of chapter twenty-six of the Public Statutes, shall be entitled to the same fees as are allowed to trial justices for similar services; but this act shall not apply to special justices of such courts who are by law entitled to other compensation as such justices than is provided under section twenty-six of chapter one hundred and fifty-four of the Public Statutes.

Acts of 1887, 310, § 3.

Medical examiners not charged with the burial of strangers.

Section seventeen of chapter eighty-four of the Public Statutes is hereby amended by striking out the words "except such strangers as are buried by medical examiners under the provisions of section twenty of chapter twenty-six."

Acts of 1885, 379, § 2.

Fee of medical witness.

When a medical examiner deems it necessary to have a physician present at an autopsy as one of the witnesses, as provided in section eleven of chapter twenty-six of the Public Statutes, such physician shall be allowed five dollars for his services.

Fees of other witnesses.

Other witnesses required by law to be present at an autopsy shall be allowed two dollars each.

See Acts of 1890, chap. 440, sect. 9, relative to fees of certain salaried officers and railway employees at inquests, etc.

Acts of 1885, 379, § 3.

Medical examiners to make returns to secretary of state.

Every medical examiner shall, annually, on or before the first day of March, transmit to the secretary of the Commonwealth certified copies of the records of all deaths which have occurred during the year ending on the last day of the preceding December, the cause and manner of which he has investigated, in accordance with the requirements of chapter twenty-six of the Public Statutes: *provided, however*, if the term of office of any medical exam-

iner shall end before the last day of December, he shall send to the secretary of the Commonwealth, within the sixty days next ensuing upon the expiration of his commission as a medical examiner, certified copies of the records of all deaths officially investigated by him during that part of the then current calendar year in which he continued in office.

Acts of 1885, 379, § 4.

Fees for recording and making returns.

Each medical examiner shall be entitled to receive from the treasury of the Commonwealth, for recording and returning the facts relating to deaths as herein provided, twenty cents for each of the first twenty entries, and ten cents for each subsequent entry in any year, as certified by the secretary of the Commonwealth, and such allowance and payment shall be made to the medical examiners in Suffolk county for record and returns pursuant to this section, notwithstanding the limitation to the salary fixed by section nine of chapter twenty-six of the Public Statutes as amended by this act. Any medical examiner shall forfeit not less than ten nor more than fifty dollars for each refusal or neglect to fulfil the requirements of section three of this act.

Penalty.

Acts of 1885, 379, § 5.

Secretary of state to furnish blank books and forms for returns.

The secretary shall, at the expense of the Commonwealth, prepare and furnish to the several medical examiners, blank books of suitable quality and size, to be used as books of record under this act, and blank forms for returns, on paper of uniform size.

Acts of 1885, 379, § 6.

Secretary to cause returns to be bound, and to publish results in registration.

The secretary shall cause the returns received by him for each year, in accordance with this act, to be bound together in one volume, with indexes thereto; he shall prepare or cause to be prepared from the said returns such tabular results as will render them of practical utility, and shall make report thereof annually to the general court in connection with the report of the registry and return of births, marriages and deaths required by section fifteen of chapter thirty-two of the Public Statutes.

Acts of 1885, 379, § 7.

Medical examiner to file a report of autopsy with district attorney and certify as to its necessity.

Every medical examiner shall forthwith file with the district attorney of his district, a report of each autopsy made by him and of his view and personal inquiry in such case under the provisions of chapter twenty-six of the Public Statutes; and shall certify in such report that, in his judgment, the cause and manner of death could not be ascertained by view and inquiry, and that an autopsy was necessary for that purpose. The district attorney shall examine such report, and if of the opinion that such autopsy was necessary shall, except in the county of Suffolk, so certify to the county commissioners, having jurisdiction over the place where the autopsy is held, and no fee for any autopsy shall be certified by the commissioners for payment until such certificate by the district attorney shall have been filed with said commissioners.

District attorney shall examine reports and state opinion as to necessity.

Acts of 1892, 152.

Use of embalming fluid regulated.

No embalming fluid, or any substitute therefor, shall be injected into the dead body of any person who is supposed to have come to his death by violence, until a permit therefor in writing, signed by the medical examiner, has been first obtained.

Acts of 1896, 338.

Certain accidents to be reported to gas commissioners

The chief of police in any city or town and the medical examiner in any district in which a person, corporation or municipality is engaged in the business of manufacturing and selling gas or electricity for lighting or for fuel, shall make a written report to the board of gas and electric light commissioners of every accident caused by the gas or electricity manufactured or supplied by such person, corporation or municipality, whereby any person shall suffer bodily injury or loss of life or be rendered insensible, stating the time, place and circumstances of the accident. Such report shall be made by the chief of police within twenty-four hours and by the medical examiner within seven days after notice of said accident.

[NOTE.—For duties of medical examiners in cases of cremation of bodies of deceased persons, see page 75.]

POWERS AND DUTIES OF THE STATE BOARD OF HEALTH.

The manual herewith published contains the laws now in force which pertain to public health in the State of Massachusetts, together with the laws relating to inquests and to the registration of births, marriages and deaths. These laws have been enacted at different periods. Some of them have reference to the powers and duties of the State Board of Health, some to those of local boards having jurisdiction in cities and towns, and some have reference to neither of these bodies.

As a matter of convenience, the following summary of the powers and duties of the State Board is herewith published in separate form.

ORGANIZATION OF THE BOARD. TERMS OF OFFICE. VACANCIES. ROOMS. MEETINGS. BY-LAWS.

1. The *state board of health* shall consist of seven persons, appointed by the governor, with the advice and consent of the council. (1886, c. 101, § 1.)
2. The members of the *board* shall hold office for seven years, so arranged that the term of one member shall expire each year. (1886, c. 101, § 1.)
3. All vacancies in the *board* shall be filled by the governor and council. (1886, c. 101, § 1.)
4. The *board* shall be provided with rooms at the expense of the state. (1886, c. 101, § 2.)
5. It shall hold meetings each month, on a day fixed by itself, and at such other times as may be needful. (1886, c. 101, § 2.)
6. It shall make its own by-laws. (1886, c. 101, § 2.)

REPORT.

7. It shall make a report of its doings to the governor and council on or before the thirty-first day of December in each year, such report to be made up to the thirtieth of September inclusive. (1886, c. 101, § 2.)

DUTIES OF SECRETARY.

8. The *board* shall elect its secretary, who shall be its executive officer, and shall hold office during the pleasure of the *board*. He shall perform or superintend the work prescribed by law for the *state board of health*, and as directed by the *board*, and such other duties as the *board* may require. He shall not be ex officio a member of the *board*, but the *board* may, whenever it shall be deemed necessary, elect one of its members secretary *pro tempore*, who may in the absence or disability of the secretary perform the duties of that office. The secretary shall receive from the treasury an annual salary of three thousand dollars, and his necessary travelling expenses incurred in the performance of official duties. (1886, c. 101, § 3; 1889, c. 370.)

EXPENSES OF BOARD.

9. No member of the *board* shall receive any compensation. The actual personal expenses of any member while engaged in the duties of the *board* shall be paid from the treasury, after they have been audited by the *board*. (1886, c. 11, § 3.)

10. All other necessary expenses arising in the secretary's office or from the discharge of the duties of the *board* shall be paid out of the treasury in the same manner as those of the different departments of the government. (1886, c. 101, § 3.)

GENERAL DUTIES OF BOARD.

11. It shall take cognizance of the interests of health and life among the citizens of the Commonwealth. (1886, c. 101, § 4.)

12. It shall make sanitary investigations and inquiries in respect to the causes of disease, and especially of epidemics and the sources of mortality. (1886, c. 101, § 4.)

13. It shall also make investigations in respect to the effects of localities, employments, conditions, and circumstances, on the public health. (1886, c. 101, § 4.)

14. It shall gather such information in respect to the foregoing subjects as it may deem proper for diffusion among the people. (1886, c. 101, § 4.)

15. It shall advise the government in regard to the location and other sanitary conditions of any public institutions. (1886, c. 101, § 4.)

SMALL-POX AND OTHER CONTAGIOUS DISEASES.

16. If small-pox or any other contagious or infectious disease dangerous to the public health exists, or is likely to exist, in any place within the state, the *state board* shall investigate the same, and the means of preventing the spread thereof, and shall consult thereon with the local authorities, and shall have co-ordinate powers as a board of health, in every place, with the board of

health thereof, or with the mayor and aldermen or the selectmen, if no such board or officer exists in such place. (Pub. Stats., c. 80, § 2; Acts of 1894, c. 218, § 4.)

17. It shall be notified by local boards of the occurrence of small-pox and of other diseases dangerous to the public health in cities and towns, within twenty-four hours after they have received notice of such occurrence. (1883, c. 138, § 1; 1893, c. 302, § 1.)

18. The secretary of the *state board* shall forthwith transmit a copy of the notice of small-pox so received to the state board of lunacy and charity. (1886, c. 101, § 4.)

REPORTS OF DEATHS BY LOCAL BOARDS.

19. In each city and town having a population of more than five thousand inhabitants, as determined by the last census, at least one member of said board shall be a physician, and the board shall send an annual report of the deaths in such town to the *state board of health*. The form of such reports shall be prescribed and furnished by the *state board of health*. (Acts of 1894, c. 218, § 3.)

VACCINE INSTITUTIONS.

20. All vaccine institutions in the state shall be under supervision of the *state board of health*. (1894, c. 355.)

INSPECTION OF LYING-IN HOSPITALS.

21. Every lying-in hospital, hospital ward, or other place for the reception, care and treatment of women in labor, shall be subject to visitation and inspection by the *state board of health*, if it receives more than six women as patients in labor in a year. (Pub. Stats., c. 80, § 58.)

HYDROPHOBIA.

22. The secretary of the *board* shall supply a description of the disease known as hydrophobia to the clerks of cities and towns upon application from them. (Pub. Stats., c. 102, § 83.)

OFFENSIVE TRADES, ETC.

23. When any building is occupied or used for carrying on therein the business of slaughtering cattle, sheep or other animals, or for a melting or rendering establishment, or for other noxious or offensive trades and occupations, the *state board of health* shall, upon application made to it for that purpose, appoint a time and place for hearing the parties, and give due notice thereof to the party against whom the application is made, and after such notice and hearing may, if in its judgment the public health or the public comfort and convenience so require, order any person to desist and cease from further carrying on said trades or occupa-

tions in such building or premises; and any person thereafter continuing so to occupy or use such building or premises shall forfeit a sum not exceeding two hundred dollars for every month of such occupancy and use, and in like proportion for a longer or shorter time. (Pub. Stats., c. 80, § 93.)

24. The supreme judicial court in term time or vacation may issue an injunction to prevent the occupancy, use, enlargement, or extension of any building or premises occupied or used for the trades or occupations aforesaid, without the written consent and permission of the mayor and aldermen of the city or selectmen of the town in which the building or premises are situated being first obtained; and also in like manner to enforce the orders of the *state board* issued under the preceding section. (Pub. Stats., c. 80, § 94.)

25. Corporations formed for the purpose of buying and slaughtering swine and of melting and rendering and pork-packing, may take and hold by purchase or otherwise such parcel of land, not exceeding one hundred acres in extent, and situated in such place, as the *state board of health* may determine to be suitable for said business. (Pub. Stats., c. 107, § 2.)

26. Buildings constructed under the provisions of chapter 107, Pub. Stats., and intended for the slaughtering of swine, and for melting and rendering, and the necessary stables and outbuildings, shall not be erected until the plans thereof, with all details of construction, have been submitted to and approved by said *state board*, or some person designated by it to examine them. The corporation shall carry on all its business in accordance with such regulations as said *state board* shall, from time to time, establish and furnish in writing to the clerk of the corporation; and for each violation of said regulations it shall forfeit not less than twenty nor more than five hundred dollars. (Pub. Stats., c. 107, § 4.)

27. Subject to the foregoing provisions, such corporation may manufacture and sell any of the usual products of said slaughtering and melting and rendering business, or may lease or permit other persons to use their buildings or parts thereof, on such terms as agreed upon. Each member of the corporation may slaughter swine on said premises, subject to such regulations and tariff of prices as the corporation may by vote at any regular meeting establish, and to the regulations of the said *state board*. A person engaged in business in the premises of such corporation, who violates any regulation of said *state board*, shall forfeit not less than twenty nor more than five hundred dollars. (Pub. Stats., c. 107, § 5.)

IMPURE ICE.

28. Upon complaint in writing of not less than twenty-five consumers of ice which is cut, sold, and held for sale from any pond or stream in this Commonwealth, alleging that said ice is

impure and injurious to health, the *state board of health* may appoint a time and place for hearing parties to be affected and give due notice thereof to such parties, and after such hearing said *board* may make such orders concerning the sale of said ice as in its judgment the public health requires. (1886, c. 287, § 1.)

29. The supreme judicial court in term time or vacation may issue an injunction to enforce such orders of the *state board.* (1886, c. 287, § 2.)

30. Such orders of the *state board of health* shall be served upon any person or persons who are or have been selling said impure ice, and any party aggrieved thereby shall have the right of appeal to a jury and be subject to the provisions of sections eighty-eight, eighty-nine and ninety of chapter eighty of the Public Statutes, and the court may render such judgment as to costs as in its discretion may seem just. (1886, c. 287, § 3.)

WATER SUPPLIES AND SEWERAGE.

31. The *state board of health* shall have the general oversight and care of all inland waters. (1888, c. 375, § 1.)

32. It shall be furnished with maps, plans and documents suitable for this purpose. (1888, c. 375, § 1.)

33. Records of all its doings in relation thereto shall be kept. (1888, c. 375, § 1.)

34. It may employ such engineers and clerks and other assistance as it may deem necessary: *provided*, that no contracts or other acts which involve the payment of money from the treasury of the Commonwealth shall be made or done without an appropriation expressly made therefor by the general court. (1888, c. 375, § 1.)

35. It shall annually, on or before the tenth day of January, report to the general court its doings in the preceding year. (1888, c. 375, § 1.)

36. At the same time it shall submit estimates of the sums required to meet the expenses of said board in relation to the care and oversight of inland waters for the ensuing year. (1888, c. 375, § 1.)

37. It shall also recommend legislation and suitable plans for such systems of main sewers as it may deem necessary for the preservation of the public health and for the purification and prevention of pollution of the ponds, streams and inland waters of the Commonwealth. (1888, c. 375, § 1.)

38. It shall from time to time as it may deem expedient, cause examinations of the said waters to be made for the purpose of ascertaining whether the same are adapted for use as sources of domestic water supplies or are in a condition likely to impair the interests of the public or persons lawfully using the same, or imperil the public health. (1888, c. 375, § 2.)

39. It shall recommend measures for prevention of the pollution of such waters and for removal of substances and causes of every kind which may be liable to cause pollution thereof, in order to protect and develop the rights and property of the Commonwealth therein and to protect the public health. (1888, c. 375, § 2.)

40. It shall have authority to conduct experiments to determine the best practicable methods of purification of drainage and sewage or disposal of the same. (1888, c. 375, § 2.)

41. For the purposes aforesaid it may employ such expert assistance as may be necessary. (1888, c. 375, § 2.)

42. It shall from time to time consult with and advise the authorities of cities and towns, or with corporations, firms or individuals either already having or intending to introduce systems of water supply, drainage, or sewerage, as to the most appropriate source of supply, the best practicable method of assuring the purity thereof or of disposing of their drainage or sewage, having regard to the present and prospective needs and interests of other cities, towns, corporations, firms or individuals which may be affected thereby. (1888, c. 375, § 3.)

43. It shall also from time to time consult with and advise persons or corporations engaged or intending to engage in any manufacturing or other business, drainage or sewage from which may tend to cause the pollution of any inland water, as to the best practicable method of preventing such pollution by the interception, disposal or purification of such drainage or sewage: *provided*, that no person shall be compelled to bear the expense of such consultation or advice, or of experiments made for the purposes of this act. (1888, c. 375, § 3.)

44. All such authorities, corporations, firms and individuals are hereby required to give notice to said *board* of their intentions in the premises, and to submit for its advice outlines of their proposed plans or schemes in relation to water supply and disposal of drainage and sewage, and all petitions to the legislature for authority to introduce a system of water supply, drainage or sewerage shall be accompanied by a copy of the recommendation and advice of the said board thereon. (1888, c. 375, § 3.)

45. It shall bring to the notice of the attorney-general all instances which may come to its knowledge of omission to comply with existing laws respecting the pollution of water supplies and inland waters and shall annually report to the legislature any specific cases not covered by the provisions of existing laws, which in its opinion call for further legislation. (1888, c. 375, § 3.)

46. Cities and towns may with the approval of the *state board of health*, obtained after a public hearing by the *board* of all parties interested, purchase or take land within their respective limits for the purification and disposal of sewage. (1890, c. 124.)

47. The *board* shall give notice of such hearings by publica-

tion in such newspapers and at such times as it may deem proper. (1890, c. 124.)

48. The *state board of health* shall have the general supervision of all streams and ponds used by a city or town as sources of water supply, with reference to their purity, together with all springs, streams and water-courses tributary thereto. (1890, c. 441, § 1.)

49. It shall have authority to examine the same from time to time and inquire what pollutions exist and what are their causes. (1890, c. 441, § 1.)

50. Whenever the mayor of a city or the selectmen of a town, using a stream or pond as a source of water supply, complains to said *state board of health* that manure, excrement, garbage, sewage or any other matter is so deposited, kept or discharged within one hundred feet of the high water mark of any such stream or pond, or any stream, pond, spring or water-course tributary thereto, as to pollute or tend to pollute the waters of such stream, pond, spring or water-course, the said *board of health* shall appoint a time and place for hearing parties to be affected, and give due notice thereof to such parties. (1890, c. 441, § 2.)

51. After such hearing, if in its judgment the public health requires it, it may prohibit the deposit, keeping or discharge of any such material as aforesaid, and may order any person to desist therefrom and to remove any such material theretofore deposited. (1890, c. 441, § 2.)

52. It shall not prohibit the use of any structure as was customary at the time of the passage of this act, unless the mayor of the city or the selectmen of the town making the complaint shall file with said *state board of health* an agreement in writing that such city or town shall at its own expense make such changes in said structure or its location as said board shall deem expedient, and such agreement shall be binding on such city or town. (1890, c. 441, § 2.)

53. When such changes have been made all damages occasioned thereby shall be paid by such city or towns. (1890, c. 441, § 2.)

54. If the parties cannot agree thereon, such damages shall be determined by a jury on petition of either party filed in the clerk's office of the superior court, in the manner provided by law in relation to determining the damages occasioned by taking land or highways in such city or town. (1890, c. 441, § 2.)

55. Said *board* shall not prohibit the cultivation and use of the soil in the ordinary methods of husbandry, provided no human excrement be used thereon. (1890, c. 441, § 2.)

56. Any person aggrieved by an order passed under this act may appeal therefrom; and if he shall, within ten days from the service of such order upon him, file a petition in the clerk's office of the superior court in the county where the premises are located, with reference to which such order is made, for a jury,

a trial may, after such notice as the court shall order to the said *board of health* and the mayor of the city or the chairman of the selectmen of a town interested in such order, be had at the bar of the court in the same manner as other civil cases are tried by jury. (1890, c. 441, § 3.)

57. If a person by mistake of law or fact or by accident fails to appeal from any such order and to file his petition for a jury within ten days, and if he makes it appear to the court or justice that such failure was caused by mistake or accident and that he has not since the service of such order upon him violated such order, he may at any time within thirty days from the service of the order upon him appeal therefrom and file his petition for a jury with the same effect as if done within the said ten days. (1890, c. 441, § 3.)

58. During the pendency of the appeal the order of the said *board of health* shall be complied with unless otherwise authorized by said *board* after the appeal. (1890, c. 441, § 3.)

59. The verdict of the jury, which may either alter the order or affirm or annul it in full, when accepted by the court shall have the authority and effect of and may be enforced in the same way as an original order from which no appeal had been taken. (1890, c. 441, § 3)

60. Any court having equity jurisdiction may, in term time or vacation, on the application of said *state board of health* or of any party interested, by any suitable process or decree in equity, enforce by injunction or otherwise such orders of said *board of health* or of said court. (1890, c. 441, § 4.)

61. And may at the same time issue an injunction to restrain, until the orders of said *board* have been complied with, the use or occupation of the premises within said distance of one hundred feet on which the said material is deposited or kept. (1890, c. 441, § 4.)

62. Whoever deposits, keeps or discharges on his premises any material in violation of such order of prohibition, after the same has been served upon him as aforesaid, shall forfeit a sum not exceeding ten dollars for each and every day until such order is complied with. (1890, c. 441, § 5.)

63. This act shall not be construed to impair or repeal any existing provision of law in regard to the pollution of springs, streams, ponds or water-courses, or the prevention of such pollution, or the powers and jurisdiction of any court relating to the prevention of such pollution: nor shall it be applicable to the Merrimac or Connecticut rivers, nor to so much of the Concord river as lies within the limits of the city of Lowell. (1890, c. 441, § 6.)

64. All hearings granted in accordance with the provisions of this act shall be held in the city or town in which the nuisance or pollution is alleged to exist. (1890, c. 441, § 7.)

CREMATORIES.

65. The *state board of health* may determine the proper location of crematories established by corporations organized for the purpose of incinerating the bodies of the dead. No building shall be erected, occupied or used by such corporation until the location and plans thereof, with all details of construction, have been submitted to and approved by said *board* or some person designated by it to examine them. (1885, c. 265, § 2)

66. Every such corporation may make by-laws and regulations consistent with law and subject to the approval of said *state board*, for the reception and cremation of bodies of deceased persons, and for the disposition of the ashes remaining therefrom, and shall carry on all its business in accordance with such regulations as said board shall from time to time establish and furnish in writing to the clerk of the corporation. (1885, c. 265, § 3.)

FOOD AND DRUG INSPECTION.

67. The *state board of health* shall take cognizance of the interests of the public health relating to the sale of drugs and food and the adulteration of the same. (1882, c. 263, § 5.)

68. It shall make all necessary investigations and inquiries in reference thereto. (1882, c. 263, § 5.)

69. For these purposes it may appoint inspectors, analysts and chemists, who shall be subject to its supervision and removal. (1882, c. 263, § 5.)

70. The said *board* shall adopt such measures as it may deem necessary to facilitate the enforcement of this act, and shall prepare rules and regulations with regard to the proper methods of collecting and examining drugs and articles of food. (1882, c. 263, § 5.)

71. Said *board* may expend annually an amount not exceeding eleven thousand five hundred dollars for the purpose of carrying out the provisions of this act. (1882, c. 263, § 5.)

72. Not less than three-fifths of said amount shall be annually expended for the enforcement of the laws against the adulteration of milk and milk products. (1882, c. 263, § 5.)

73. Samples of food or drugs are to be furnished to any officer or agent of the *board* who applies for the same and offers its value. (1882, c. 263, § 6.)

74. Whoever obstructs such officers is liable to punishment. (1882, c. 263, § 7.)

75. The *state board of health* shall report annually to the legislature the number of prosecutions made under said chapter, and an itemized account of all money expended in carrying out the provisions thereof. (1884, c. 289, § 2)

76. An inspector of the *state board* shall have the same powers and authority conferred upon a city or town inspector by section

two of chapter fifty-seven of the Public Statutes with reference to the collection of samples of milk. (1884, c. 289, § 3.)

77. Inspectors of the *state board* shall have the power and authority conferred upon a city or town inspector by section one of chapter three hundred and eighteen of the acts of eighteen hundred and eighty-six with reference to the collection of samples of milk. They shall also have the power and authority conferred upon inspectors of milk by section twenty of chapter fifty-six of the Public Statutes with reference to the collection of samples of butter, or imitation butter. (1885, c. 352, § 5.)

78. The dairy bureau may work in unison with the *state board of health*, but shall not restrict, limit or interfere with the duties of its officers. (1891, c. 412, § 10.)

THE SALE OF ARTICLES CONTAINING ARSENIC.

79. Every person offering, or exposing for sale or exchange any paper, fabric or other article must furnish a sample to any inspector, chemist or other agent or officer of the *state board of health* who applies for the same and offers the value of the sample. (1891, c. 374, § 3.)

INSPECTION OF UNHEALTHY WORKSHOPS, AND OF CLOTHING MADE IN THEM.

80. The chief of the district police must notify the *state board of health* to examine workshops where clothing is made and the materials used in them, and if the *board* finds such shops in an unhealthy condition, or the clothing and materials used in them unfit for use, the *board* shall issue such order or orders as the public safety may require. (1891, c. 357, § 2.)

81. Whenever it shall be reported to the *state board of health* that clothing is being shipped to this commonwealth, having been previously made in whole or in part under unhealthy conditions, an inspector shall examine them and if such report proves true, he shall report to the *state board of health*, which *board* shall make such order or orders as the safety of the public shall require. (1891, c. 357, § 3; 1892, c. 296, § 2.)

The following statutes relate to certain general duties pertaining to all boards, commissions and public officers: —

[Pub. Stat., Chap. 4.]

SECT. 5. The annual reports which are required by law or custom to be made to the governor and council, to the general court, to the secretary of the commonwealth, or to the governor to be by him transmitted to the general court, shall, except when other provision is made, include the year ending on the thirtieth day of September, and be submitted to the secretary of the

commonwealth on or before the fifteenth day of October; and whoever wilfully neglects to make and transmit a report as required by this section shall forfeit ten dollars for each day such neglect continues.

SECT. 6. Public officers and boards, and managers of public institutions, shall, in addition to their annual reports, make special reports when the public interests require them.

SECT. 7. There shall be printed annually, on or before the assembling of the general court, or as soon thereafter as possible, the number of copies of documents and reports specified in the following list, the same to be numbered in a series to be called Public Documents, and distributed as herein provided. Said reports shall be made as brief as may be without omitting any facts or information which the officers or departments making them are required by law to furnish therein, and they shall be transmitted to the general court through the office of the secretary of the commonwealth. No larger number of copies than is herein provided for shall be printed at the expense of the commonwealth, or be paid for out of any contingent fund or out of the earnings of any department or institution, where such earnings are the property of the commonwealth; and no bill for printing any larger number shall be approved by the auditor or paid out of any funds belonging to the commonwealth. . . . Report of the *state board of health* five thousand copies.

SECT. 8. Five hundred copies of each of the series of public documents named in the preceding section shall be retained by the state printers for binding in sets; and the secretary of the Commonwealth shall furnish one set, in a bound volume with a brief index, to each city or town in the commonwealth, to be preserved in some public place therein, and one set to such public and other libraries as he in his discretion may select. All public documents, the distribution of which is not otherwise provided for, shall be distributed under direction of the secretary of the commonwealth and of the secretaries or heads of the several boards or departments to which they relate.

SECT. 10. Each member of the executive and legislative department, the clerks of both branches of the general court, and each reporter assigned a seat in either branch, shall be entitled to receive one copy of each of the books named in sections seven and nine. Each member of the general court and the clerks of the two branches shall also be entitled to receive . . . seven additional copies of the report of the *state board of health*.

[Acts of 1893, Chap. 144.]

Such parts of the annual reports of state boards or commissions, required by law to be made to the governor and council or to the general court, as contain recommendations or suggestions for legislative action, shall be deposited with the secretary of the

commonwealth on or before the first Wednesday in January of each year, and shall by him be transmitted forthwith to the governor and council or to the general court.

BOARD OF SUPERVISORS OF STATISTICS.

[Pub. Stat, Chap. 31.]

SECT. 17. The secretary of the commonwealth, the secretaries of the boards of agriculture, of education, and of the *state board of health*, and the chief of the bureau of statistics of labor, shall constitute a board of supervisors of statistics, who shall serve without pay. A member of said board shall be appointed chairman thereof by the governor with the advice of the council, and shall have power to appoint a secretary. The board shall meet regularly at the state house at least once in each month, and at other times when called together by the chairman.

SECT. 18. The board shall have general supervision on all matters relating to the statistics to be gathered and reported by either of the departments represented on the board. An investigation contemplated by either of said departments shall, before it is made, be reported to the board, which shall so direct the method thereof as to prevent unnecessary work, and to make plain the presentation of the facts, and shall simplify and abridge, as far as may be, the statistical matter to be presented by any department represented, and, when such matter is germane to that under the care of another department, shall see that such matters are consolidated and presented by one department only.

SECT. 19. A sum not exceeding five hundred dollars shall be allowed said board for annual contingent expenses.

SPECIAL DUTIES

ASSIGNED TO THE STATE BOARD OF HEALTH

Since its Reorganization in 1886.

In addition to the regular duties prescribed by the Statutes, to be performed by the State Board of Health, several important investigations have been entrusted to the Board since 1886, which are as follows: —

The sewage disposal of the Mystic and Charles River Valleys. In compliance with the requirements of chapter 95 of the Resolves of 1887, the State Board of Health made the investigations required in that resolve, and reported the same to the General Court in January, 1889. A commission was then appointed to carry out the work outlined by the Board, which is now rapidly approaching its completion. The report of the State Board of Health on this subject formed a separate document, — Senate Document 2 of 1889.

By an order of the same Legislature (1887) the Board was required to make a special investigation and to report to the General Court on the manufacture and sale of oleomargarine. This report was submitted to the Legislature in January, 1888, and was published in the nineteenth annual report of the Board

By a resolution of the Legislature of 1888 the State Board of Health was requested to make an investigation concerning the sale and use of opium. This resolution

was reported upon by the Board to the Legislature of 1889, and its report thereon is published in the twentieth annual report of the Board.

By chapter 84 of the Resolves of the same year (1888), the State Board of Health was directed to make an investigation upon the pollution of ponds, lakes, streams and other bodies of water used as ice supplies. The report upon this subject was made to the Legislature of 1890, and is published in the twenty-first annual report of the Board.

By the provisions of chapter 374, section 2, of the Acts of 1891, the State Board of Health was authorized to make such investigations and inquiries as they deemed necessary as to the existence of arsenic in any paper fabric or other article offered for sale and exchange. The report upon this subject was made to the Legislature Feb. 1, 1892, and is published in the twenty-third annual report of the Board.

By an order of the Legislature of 1893 the Board was directed to extend its investigations upon impurities of ice to *manufactured* ice, and to report to the same Legislature. The report upon this subject was made to the Legislature of 1893, on May 16, 1893, and is published in the twenty-fourth annual report of the Board.

By the provisions of chapter 459 of the Acts of 1893, the Board was "authorized and directed to investigate, consider and report upon the question of a water supply for the city of Boston and its suburbs within a radius of ten miles from the State House, and for such other cities and towns as in its opinion should be included in connection therewith." The report upon this important question was made to the Legislature in February 1895, and was published as House Document 500 of the year 1895.

A commission was appointed in the same year to carry out the work thus outlined, and the work of constructing and introducing the Metropolitan Water Supply is now in progress.

By the terms of chapter 475 of the Acts of 1893, the Metropolitan Park Commission and the State Board of Health were made a joint board to investigate the sanitary condition and to prepare plans for the improvement of the

beds, shores and waters of the Charles River between the Charles River bridge and the Waltham line, and for the removal of any nuisances therefrom.

The joint report upon this question was completed and sent to the Legislature in April 1894, and was published as House Document 775, 1894.

By the provisions of chapter 529 of the Acts of 1894, the same joint board was directed "to investigate the sanitary condition and to prepare plans for the improvement of the Charles River and its banks from the line between Waltham and Watertown, and Mother Brook in Dedham, and for the removal of any nuisances therefrom." This report was completed and sent to the Legislature in May 1896.

By the provisions of chapter 426 of the Acts of 1894, the State Board of Health was authorized and directed to dredge the bars in the Concord and Sudbury rivers above the dam at North Billerica and to remove the weeds from said rivers, and take "such other measures as shall in the opinion of the board, tend to the restoration of the marshes along the river to their original condition, and to the abatement of malaria, and other perils to the public health arising from the present state of the same."

This investigation was carried out by the board, and a report upon the same was made to the Legislature Feb. 6, 1896. (House Document 891, 1896.) In the process of the work it was found necessary to take down and rebuild a bridge in Wayland, and a further appropriation was made for this purpose by the Legislature of 1896.

By chapter 83 of the Resolves of 1895, the Board was directed to investigate the sanitary condition of the Neponset river and meadows and report a plan for improving the same, if the condition was found to be dangerous to the public health.

By chapter 112 of the Resolves of 1895, the Board was authorized and directed to consider and report a general system of drainage and sewerage for the city of Salem and the town of Peabody.

By the provisions of chapter 495 of the acts of 1896, the State Board of Health, and the Harbor and Land Commissioners, acting as a joint Board, were "required

to cause an examination of Green Harbor in the town of Marshfield, and of the Green Harbor Marshes, and the dam and dike constructed across Green Harbor River" to be made, and to report to the next General Court, whether substantial improvement in and benefit to Green Harbor will result from the removal of the dam and dike and whether no damage to vested property rights, greater than the benefit derived from such removal will result therefrom. The investigations required by this act are in progress and will be reported upon when completed.

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